

**A CRITICAL ANALYSIS ON CRIMINAL JUSTICE SYSTEM
AND VICTIM: COMPENSATION AND RESTITUTION OF
VICTIM**

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

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TABLE OF CONTENT

S. NO.	CHAPTERS	PAGE NO.
1.	Introduction	1-32
2.	Victim, Victimization And Victimology - Conceptual Developments	33-40
3.	Investigating Challenges And Opportunities For Reform In Compensation And Restitution Programs For Victims	41-71
4.	Analyzing The Efficacy And Limitations Of Current Compensation And Restitution Programs For Victims	72-85
5.	Assessing The Implications Of Findings And Making Recommendations For A More Victim- Centered Approach	86-90
6.	Conclusion & Suggestions	91-93
7.	References	94-97

Chapter 1: Introduction

Chapter 1

INTRODUCTION

Law in many ways is identified as an instrument of social justice. It exists in the society mainly to defend its people and shun pain and suffering. Human life is invaluable gift of God and right to life and personal liberty is the first and foremost prerogative of an individual.¹ Law is to come out of a harsh line of a statute book and to be more humane, caring, effective, natural and real. The legitimacy of the criminal justice system is based largely upon both its effectiveness and its fairness.² Its effectiveness is judged by its ability to investigate and detect crime, identify offenders and mete out the appropriate sanctions to those who have been convicted of offences. Its fairness is judged by its thoroughness and the efforts it makes to redress the resource imbalance between the accused and the State at the investigatory, pretrial, trial and appellate stages. The system does this by providing evidentiary protection and effective legal representation at all points.

Crime affects the individual victims and their families. Many crimes also cause significant financial loss to the victims. The impact of crime on the victims and their families ranges from serious physical and psychological injuries to mild disturbances. One area which is totally overlooked is the plight of the victims. It is a recent trend in the sentencing policy to listen to the wailings of the victims. Rehabilitation of the prisoner need not be by closing the eyes towards the suffering victims of the offence. A glimpse at the field of victimology reveals two types of victims. The first type consists of direct victims, i.e. those who are alive and suffering on account of harm inflicted by the prisoner while committing the crime. The second type comprises of indirect victims who are dependant of the direct victims of crime who undergo suffering due to deprivation of their bread winner³.

The victims have right to get justice, to remedy the harm suffered as a result of crime. This

¹ Prem Shankar Shukla v. UT of Delhi (1980) 3 SCC 526; Francis Coralie Mullin v. UT of Delhi (1981) 1 SCC 608; Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161; Khedat Mazdoor Chetna Sangath v. State of Madhya Pradesh (1994) 6 SCC 260; M. Nagaraj v. Union of India (2006) 8 SCC 212; Maharashtra University of Health Sciences v. Satchikitsa Prasarak Mandal (2010) 3 SCC 786; Selvi v. State of Karnataka (2010) 7 SCC 263; Mehmood Nayyar Azam v. State of Chhattisgarh (2012) 8 SCC 1; Shabnam v. Union of India (2015) 6 SCC 702; Jeeja Ghosh v. Union of India (2016) 7 SCC 761.

² Government of India, Report of the Committee on Draft National Policy on Criminal Justice (Ministry of Home Affairs, July 2007).

³ *State of Gujrat v. Hon''ble High Court of Gujrat* (1998) 7 SCC 392.

right is different from and independent of the right to retribution, responsibility of which has been assumed by the State in a society governed by the Rule of Law. But if the state fails in discharging this responsibility, the State must still provide a mechanism to ensure that victim's right to be compensated for his injury is not ignored or defeated. Increasingly the intention of criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimization and protection of victims of crimes. Crime often entails substantive harms to people and not merely symbolic harm to the social order. Consequently the needs and rights of victims of crime should receive priority attention in the total response to crime. One recognized method of protection of victim is compensation to victims of crime. The needs of victims and their family are extensive and varied.⁴

In recent years, the phenomenon of “victim rights” has been catapulted to the forefront of policymaking on both domestic and international platforms. While the criminal justice system has traditionally been conceptualized as a mechanism for the State to resolve its grievances against suspects, defendants and offenders, it is now broadly accepted that justice cannot be administered effectively without due recognition of the rights and interests of other parties affected by the criminal action. This shift has affected the extent to which their interests are represented in the formulation of criminal justice policy, in that increasing number of initiatives are undertaken in the name of victims, seeking to bolster their position within the system. These developments raise a number of key questions and fundamental issues concerning the structural and ideological basis of our criminal justice system, not least as to whether the very concept of “victims right” is inherently compatible with a system that is ideologically constructed as bipartisan contest between the State and the accused.⁵

The Principles of Victimology has foundations in Indian Constitutional jurisprudence. The provision of Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) form the bulwark for a new social order in which social and economic justice would blossom in the national life of the country (Article 38). Article 41 mandates *inter alia* that the State shall make effective provisions for 'securing the right to public assistance in cases of disablement and in other cases of undeserved want). So also Article 51 A makes it a fundamental duty of every Indian citizen, *inter alia* to have compassion for living creatures and to develop humanism. If emphatically interpreted and imaginatively expanded these

⁴ The 15th Law Commission Report on the Cr. PC.

⁵ Jonathan Doak, *Victim Rights, Human Rights and Criminal Justice. Reconceiving the Role of the Third Parties*, Oxford and Portland, Oregon, 2008. P. 1

provisions can form the constitutional underpinning for victimology.⁶

In recent years victim compensation has been viewed as a developmental area in the world of victim services and assistance. It emerged independently, operated for many years separately from service networks, and seemed to address different issues and problems. In reality, the evolution of victim compensation was a key factor in the victim assistance movement. Before 2009, Indian Legislature and Judiciary have not defined "Victim of crime" anywhere. In this regard, reliance can be placed upon United Nations General Assembly Declaration of Basic Principles of Justice for Victim and Abuse of Power adopted in November 1985, which through Articles 1 & 2 give exhaustive definition of the phrase. On the other hand, Rehabilitation means to restore to useful life, through therapy and education or to restore to good condition, operation, or capacity. The assumption of rehabilitation is that people are not permanently criminal and that it is possible to restore a criminal to a useful life, to a life in which they contribute towards themselves and the society. Goal of rehabilitation is to prevent habitual offending, also known as Criminal Recidivism. The rights of an accused or a convict, are well safeguarded both by the Constitution and other laws of the country which have often been discussed and debated at various forums, but in all these, there has been hardly any reference to the "Rights" of the Victims of crime towards rehabilitation. Although after 2009, Indian legislature inserted Sec 357A which directs State to make Victim Compensation Scheme for the rehabilitation and monetary assistance to victims. The present thesis, focuses on the existing victim compensation scheme in India provided under Sec 357A of Criminal Procedure Code, 1973 and it shall also make a comparative analysis of scheme with other jurisdiction around the world. In addition to the above objective present thesis shall also evaluate Section 357 of Code of Criminal Procedure, 1973 and the role of judiciary and Legal Service Authorities of each State in awarding compensation to victims of crime. It shall also trace the 2 historical evolution of compensatory jurisprudence under criminal justice system. Further this thesis shall examine the functioning of National Human Rights Commission in recommending and strengthening the compensation to victims and ascertain the awareness about the victim's right and to be examined the various loopholes under the existing compensatory statutory provisions and rules framed there under.

STATEMENT OF THE PROBLEM

History tells us that the victims of crime have generally been forgotten and forsaken in the criminal justice system in general and in India in particular. If this treatment of victims is added as unfair and distracting, then one can conclude this is secondary victimization of them which ultimately may result in

⁶ *Suresh & Ans v. State of Haryana*, 2014 (8) Supreme 289.

disobedience to the law. For reasons known and unknown crime has sprawled its wings affecting larger parts of the population. Statistics of National Crime Records Bureau state that over 66,01,285 cases were received in the country by 31.12.2020, which is an increase of slightly over 21.06% over 2019 figure. This has been the case in the past few decades. Increased crime rate has been resulting in increased segments of victims. The list of categories of victims of crime has been ever growing. Victim-centered justice system has been the need of the hour. Many countries have moved towards legislations on rights of victims of crime.

Therefore, there is need for renewal of emphasis and enhanced sensitivity to the rights of victims. As there are limited legal provisions in this regard under Indian law there is a need for streamlining Indian legal system to address the pathetic situation of the victims of crime.

In our country lethargy still looms large over the functionaries associated with criminal justice system. Victim protection, victim rehabilitation and victim assistance are still a mirage whereas victim compensation has become a reality to some extent. Sensitization of the legislatures, lower judiciary, the police, the other officers and the public on the need of victim orientation has been the most challenging job. Attention to the expectations of the victims of crime and violence requires a constant research and endeavor. The strategies of victim protection, rehabilitation, assistance and compensation need upheaval on the basis of the magnitude of crime and on lines of international developments in the field of Victimology.

The importance of the study lies in the fact that it will contribute to the proper perspective of the compensation to victims of crime under the present criminal justice system and will reveal the ineffectiveness of them. The present study is believed to be helpful to academicians, law makers, lawyers and social activists. It is expected to be of an immense use for the judges as it involves critical analysis of the significant judgments of Supreme Court of India and other Courts. Lastly, the importance of the study lies in its purpose, namely, to make an original contribution to the discipline of law.

The Researcher felt that a constant endeavor on the problems of victims will help the victims in particular and the criminal justice system in general. In this

background the topic is selected for research.

REVIEW OF LITERATURE

A brief Rai, S. (2007) in her book entitled "*Law ing to Plea Bargaining*" introduced the concept of plea bargaining along with its history, functions and roles, its considerations etc. She also elaborated the role of prosecutor, defence counsel, judge in facilitating plea bargaining. She studied the practice of plea bargaining at international level (USA, UK, Australia, Canada) as well as India. The major lacuna is that her book is that it is only textual and no commentary or conclusions have been provided.

Singh, R.K. (2009) in his article entitled "*The Emergence of Compensatory Jurisprudence and Protection of Human Rights*," has articulated few but relevant judgements of Supreme Court and High Courts on compensation under Arts. 32 and 226 of the Constitution of India for public wrong, particularly, deprivation of human right i.e. right to life and liberty. The author has also made a humble attempt for projecting the problem, in the perspective and growing modern need of compensatory jurisprudence for protection of human rights.

Patil, D. (2010) in her article "*Analysis of Plea bargaining in India*" urges that the technique of plea bargaining will be proper answer to the overburdened criminal courts. She has used National Crime Record Bureau data of 2006 to bring forward the real picture of overburdened jails in India. She appreciates the legislature that it has done good job by passing the Criminal Law (Amendment) Act, 2005 and adding the provisions of plea bargaining in the Code of Criminal Procedure, 1973. She stresses that now the ultimate responsibility posed in judiciary to keep the spirit of plea bargaining alive. The judges should endeavour for the disposition of mutually satisfactory solution agreeable to accused, victim and prosecutors as well.

Singh, R and Sonal, A.K. (2010) in their paper, "*Plea bargaining A Unique Alternative*", elucidated the importance of plea bargaining in Indian judicial system because of the prevalence of lengthy trials and overburdened courts. While explaining the concept, kinds, effect and growth of plea bargaining in Indian judicial system the authors consider this concept to unload backlog cases and facilitate speedy trial, reduction in number of undertrial prisoners. Plea

bargaining can again restore people faith in Indian judiciary.

Kakkar and Ohja (2011) in their article on, "*An Analysis of the Vanishing Point of Indian Victim Compensation Law*", have focused on reforms toward a restorative criminal justice system hinged on the amendment made to the Indian Code of Criminal Procedure, 1973 in 2008. In this paper the authors have revealed that these amendments were undertaken by the government in order to reform India's archaic criminal laws. The major thrust of the victim related amendments were on defining "victim" and recasting existing defunct laws related to the provision of compensation to victims. Unfortunately the major fallacy of the recent law is that it once again seems to leave the provision of compensation to the sole discretion of judge. The prime focus of the paper is an analysis of the above-mentioned amended law related to victim compensation and shortcomings of the same.

Goyal, A. (2012) in his article on, "*Victim right to access to justice*" seeks to address the rights of victims under the Indian criminal justice system. The author has also tried to analyse the rights which are recognised in international conventions and other countries and has made some suggestions which may be incorporated to reform and support our criminal judicial system.

Naval, S. (2012) in her article, "*Victim Compensation under Criminal Justice System*," studies the apathy of victims of crime being a neglected lot in the whole judicial process. While defining victim she overview the laws related to compensation to the victim along with its limitations and suggestions.

Dr. Preeti Mishra and Dr. Alok Chandra (2016) in their article "*compensatory jurisprudence in india with special reference to dispensation of justice to the victims of rape:a critical appraisal*" stated that traditionally criminal administration of justice assumed that the claim of the victim is sufficiently satisfied by the conviction and the sentence of the offenders. But then the question is does conviction and sentence of the offenders deliver justice to the victims. In modern times much movement is going on across the world to reexamine the concept of compensation or restitution to the victims^{7, 131}.

In India, the primary object of CJS is to ensure that no innocent person gets

⁷ P.Mishra and A. Chantia, *Compensatory Jurisprudence in India with Special Reference to Dispensation Of Justice to the Victims Of Rape : A Critical Appraisal*, available at <http://www.freewebs.com/manab/6.pdf> Last visited on June 12, 2019).

punished and every accused person gets a fair opportunity to prove his innocence. The provision of Section 357 was invoked rarely by our courts to give compensation to the victims. The Law Commission of India and the Malimath Committee have also recommended strengthening the compensatory measures. Thus, the Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009) has incorporated section 357A to establish State Sponsored Compensation. Section 357A envisages that Governments of States with the co-operation of the Central Government shall provide the funds so that the adequate compensation can be given to the victims. The judiciary has now the role of only recommending for compensation and it is the State or the DLSA which will decide the amount of compensation. In keeping with the spirit of section 357A, CrPC, we find the State Governments and UTs of India started framing laws for awarding compensation to the victims.

Broadly speaking the above noted studies have hardly discussed the institutional strategy, design under Cr.P.C. for recovery and payment of compensation to victims of crime. This study requires incisive, analysis of the development, recognition and effectiveness of statutory positions applicable to all the cases. The present articles are seemed to be verbatim. Thus the authors have shown very casual approach to attempt on this subject. There is lack of detailed study on this subject i.e. very few books are available on compensation and plea bargaining.

MEANING & DEFINITION OF VICTIM

To the word “victim” may be attributed five fundamentals factors, namely, nature, society, energy, supply, motorization and criminality. Nature causes disasters such as earthquake, floods droughts and famine. Society holds a collective potential for starting mass conflict that may generate genocide, terrorism and abuse of power. Another aspect of socially determined victimity is the consequence of over population, poverty, illiteracy, alcoholism, drugaddiction, prostitution and occupational diseases. Motorization and energy resources are causing innumerable traffic accidents on land, at sea, and in the air, apart from industrial and domestic accidents. Last but not the least, the most important categories of

victims is crime victims.¹⁶

Victim can be broadly divided into two categories, criminological and non-criminological. The character that makes a person definable as a crime victim is the suffering of adversity due to contravention of criminal law by another person or entity.

“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”⁸

Perhaps realizing the gravity of the problem the United Nation General Assembly (UNGA) in 1985 adopted a "Declaration of the Basic Principles of Justice for the Victims of Crime and Abuse of Power. The Declaration gives a comprehensive definition of a victim.

According to declaration,⁹ Victims includes:

“Any person 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 violations of criminal laws, including those laws prescribing criminal abuse of power.”

Under this definition, we can assume that both natural and legal persons, individuals and collective groups and the families and dependants of injured parties would also constitute victims.

American Heritage Dictionary defines “victim” as:

- i. someone who is put to death or subjected to torture or suffering by another;
- ii. execution or casting out a person to satisfy a deity or hierarchy;
- iii. victims of war;
- iv. person who is tricked, swindled or taken advantage of; and
- v. a person who suffers injury, loss, or death as a result of a voluntary undertaking.

The legal definition of victim includes a person who has suffered direct or threatened physical, emotional or pecuniary harm as a result of the commission of crime; or in the case of victim being an institutional entity, any of the harms by an individual or authorised

⁸ Ibid.

⁹ United National General Assembly adopted a Declaration of the Basic Principles of Justice for the Victims for Crime and Abuse of Power – in 1985

representative of another entity¹⁰.¹⁹ Thus victim of crime refers to any person, group or entity who has suffered injury, or loss due to illegal activity and the harm may be physical mental or economic. Term victim also includes persons who have suffered harm as a result of assisting victims in distress or to prevent victimisation. The definition of victim in other international Human rights instruments are also in similar Lines.¹¹

As per Code of criminal procedure, victim means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression includes guardians and legal heir of the victim¹². This definition which was incorporated by the 2008 criminal procedure (Amendment) Act, 2008¹³, is a step in positive direction. However the term “for which the accused is charged” shows the restrictive nature of this definition. The definition is narrow when compared to the definitions provided in other International human rights instruments.

A person may be considered a “victim” regardless of whether the perpetrator is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim. Furthermore, the term “*victim*” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. It can therefore be concluded that in strict legal terminology, “victims” are persons who suffer a loss or injury by an act or omission of another and include all those persons who are, in the ordinary course of natural events, dependant on such person, at the time when the act in question was so committed or omitted.

Moreover for every crime that is committed, there are at least two victims. One is the public/ society, who suffers due to the violation of criminal law and the other, is actual individual who has suffered injury to person, property or reputation¹⁴.

In order to incorporate a restorative approach into our criminal justice system, we must first understand clearly who the victims of any given crime are. Certainly, many crimes

¹⁰ cf Dr Krishna Pal Malik, Penology, victimology and correctional administration in India, 213(2012), see also Rabindra K Mohanty & Satyajit Mohanty, Text Book of criminology, penology and victimology, 441(2012).

¹¹ See United Nations Convention against Torture, Principle 8 of Basic Principles and guidelines on the right to remedy and reparation, 2006,etc.

¹² Sec 2(wa) inserted by The code of criminal procedure (Amendment) Act, 2008

¹³ Inserted by The Code of Criminal Procedure (Amendment) Act, 2008, Received the assent of the President on 7th January, 2009, Act Published in the Gazette Of India 9-1-2009, Part II Schedule 1 Extraordinarily P.1 (No.6).

¹⁴ As far as the society or the public is concerned the crime is regarded essentially as the disturbance to the “equilibrium of the social order” and hence takes up the responsibility of restoring the peace and harmony by punishing the criminal. The second victim, the "principle affected" in terms of loss of life, limb, property etc is relegated to the secondary status in the criminal justice process.

have an easily identifiable direct victim – what we'll call the primary victim. The primary victim is the one who was directly attacked or harmed, or the owner of property damaged or robbed. In attempting to repair the damage caused by a crime, it is easiest to look to the needs of this primary victim, who may need counseling, the ability to confront the offender, compensation for loss, and so on. However, for a more complete picture we must recognize that this is not where the victimization ends with most crimes. The family and friends in the immediate community of the victim, which we'll call secondary victims, have also been harmed. They may be afraid, or have lost a sense of security, and they more likely have had to make specific sacrifices in order to comfort the primary victim. Their lives have been changed by the crime.

With many crimes, the same is likely true of the broader society in which the crime occurs as well - a third order of victims beyond the immediate community of the victim. This broader society loses a sense of security as fear of future crime increases. Property values may be affected, and lifestyles changed. With crimes such as drug crimes, an offender's actions may have contributed to a broader market of drug trafficking and production, contributing to crime and poverty reaching across the country. Accordingly, communities from the most immediate secondary victims to larger and larger spheres of society may need to be considered when dealing with each individual crime.

But it is also true that the offender himself must be acknowledged as a victim of the crime, as well. Often, the crime was motivated by factors far outside the control of the offender – poverty, desperation and addiction being the most obvious examples. Further, after the initial commission of the crime, it is arguably the offender that suffers the most, as a subject of criminal prosecution. Along with punishment may come ostracization from the community, even from their families. The offender's future may be lost entirely, with limited hope for reintegration into society, or even for finding a decent job down the road. The crime has placed them in a difficult cycle of the same things that motivated the crime in the first place. Certainly, this does not excuse the crime itself, but merely means that it may be helpful to acknowledge the needs of the offender as we focus on the victims of crime.

In some ways, the offender is a sort of primary victim in a separate sphere from the true primary victims. In this separate, though certainly overlapping, sphere, there also must be considered secondary victims, as an offender's family and community may be substantially harmed by the crime. The loss of the offender as a member of the family can leave children and spouses unsupported, and community roles and jobs unfilled. As people

are pulled out of their community for prosecution and punishment, and perhaps more importantly when they are returned to that community afterward, the community can be torn apart. This harm to the offender's community may even amplify the roots of the crime to begin with, as an unsupported family may turn to crime just as the initial offender had, with poverty and addiction problems only made worse. Accordingly, the families and communities of the offender must be considered in addition to those of the primary victim. Yet again, a third order of victims may be affected by the harm to the offender, as well, as the even the broadest view of society suffers when a large segment of it is imprisoned or otherwise removed as contributors to society.

Indeed, for many crimes such as drug crimes, which take up the largest share of our criminal prosecution system of any category of crime¹⁵, there is no clear primary victim at all. Nevertheless, these crimes demonstrate the powerful harm that can be caused to second and third order victims, and more directly to the offender's sphere of victimization. It may be equally beneficial, or even more beneficial, to focus on repairing that harm in these cases. One approach to restoring this kind of harm involves a very personal investigation of the harm caused by the crime, such as that seen in Alcoholics Anonymous. The offender himself can look into the drug or alcohol addiction to determine who in his family and community have suffered most from it, and then make an attempt to right the wrongs done. Additionally, various forms of community service may provide the offender an opportunity to contribute directly to the repair of the harms caused by the specific type of crime committed to the community and society as a whole. This not only provides the direct reparation done by their service, but also helps the offender to understand more deeply the negative effects of the crime, and thus to avoid repeat offense. These types of crime may best demonstrate the need to identify the whole picture of victims in order to make any effort to fix the harm caused by the crime.

It is worth acknowledging that least in this picture of victims is the State as a whole affected by crime. Traditionally, the State may bear the cost of prosecution and punishment, but this is generally the extent of the harm done by a specific crime to the State. And yet, in the traditional American criminal justice system, the only party with a true voice other than the offender is the State. The prosecution represents the State exclusively, and generally the punishment handed down is punishment for the crime against the State. If that punishment

¹⁵ According to the Bureau of Justice Statistics, drug crimes accounted for 13% of all arrests in 2007, with 1.9 million arrests. Driving under the influence, which leads to a similar analysis, came in second with 1.4 million arrests

takes the form of a sanction or fine, even that fine traditionally goes to the State, rather than the victims.

This was not always the case. The idea of the State taking over the role of prosecution developed in the Middle Ages, when monarchs found significant profit in deciding that all crimes were crimes against the State, rather than against victims¹⁶.²⁵ Prior to that, history shows a tendency toward restitution to victims for crimes, and heavy community involvement in criminal prosecution.¹⁷²⁶ Since the State took over this role, it has been widely accepted that this was the natural way of things – with a focus on punishment by the State.

In our traditional system of criminal justice, nonetheless, the primary victim has little to no role to play other than as witness for the prosecution. This is the greatest complaint of most victims and victim advocacy groups. After victims report a crime, rarely are they even informed of any of the proceedings unless they are needed to act as a witness. Even then, the victim has no real say in the plea bargaining process, or even in the prosecution or sentencing. Instead, the victim is simply used by the prosecution to help reach its goal of punishment. Moreover, due to our adversarial system victims often feel abused, even re-victimized, when they do participate as witnesses. That adversarial process of two battling extremes is anything but conducive to a healing process for any of the parties involved.

Even when the primary victim does get to speak in a criminal proceeding, this still leaves out the voices of the secondary victims in the community. Ideally a “jury of peers” could help fill this gap. However, juries are carefully selected to specifically avoid actual members of the victim's or offender's communities, in order to avoid jury bias. Accordingly, the jury ends up being comprised of citizens of the same city as the offender and victim, but with the least connection to the crime. The community most affected by the offense is intentionally left out of the process entirely, with those least affected left to make the decisions of how to treat the crime.

It should be noted that our system does afford an alternative for primary victims that want to be compensated for the harm they have suffered at the hands of an offender – the civil justice system. Realistically, however, the usefulness of that system for victims is extremely limited. They must take on litigation at their own cost entirely, which is generally

¹⁶ See, generally, Braithwaite, John, and Strang, Heather. *Restorative Justice: Philosophy to Practice*. Aldershot: Ashgate, (2000)

¹⁷ See, generally, Weitekamp, Elmar G. M. *The History of Restorative Justice*, in Bazemore, Gordon. *Restorative Juvenile Justice: Repairing the Harm of Youth Crime*. Monsey, NY: Criminal Justice Press, (1999).

quite expensive. More importantly, however, the system is generally limited to monetary damages and avoids creative resolutions. Monetary damages are often useless in the cases of crime where the victim wants something other than money in order to repair the harm, or where the offender has no substantial money from which to demand restitution. Moreover, this process is also still an entirely adversarial process, with a winner and a loser. Again, this is not an environment at all conducive to a healing process from which the parties can find a real resolution.

In the end, the only relevant party with a real voice in the criminal proceedings is the offender himself. Admittedly, this is a result of a long history of oppression of the accused by the criminal proceeding. Arguably the greatest room for abuse of the system comes at the offender's expense. For this reason, our system has evolved with a focus on protecting the rights of the offender – from the right to confront his accuser and the right to representation to the presumption of innocence and due process rights. However, little attention has been traditionally paid to comparable rights for victims in the process. Instead, the State has actively removed the victims from the process, and tried to represent their interests purely in the form of assigning a retributive punishment. This simply does not satisfy the needs of victims.

HISTORY AND PHILOSOPHY OF VICTIMOLOGY

The word “victimology” was coined in 1947 by a French lawyer Benjamin Mendelsohn, by deriving from a Latin word "victima" and a Greek word "logos". Victimology is basically a study of crime from the point of view of the victim, of the persons suffering from injury or destruction by the action of another person or a group of persons. There are references in Manusmriti, the Book of Exodus, and Homer's Iliad to compensation being paid to victims of criminal offences. References to victim compensation are also found in the code of Hammurabi. It is said that, it was quite common for the early civilization to extract payments for the victims from the offenders, which process is now known as restitution.¹⁸²⁷

The picture began to change with modern criminal justice in which the government assumed responsibility for dispensing justice by bringing the offender to book, but it also meant that, with the appropriation of the fines to the state coffers, the victim was left with ineffective remedies. During the past three to four decades, several justifications for initiating

¹⁸ V. N. Rajan, *Victimology in India Perspectives Beyond Frontiers*, A P H Publishing Corporation, New Delhi, 2012, p. 5 & 6.

victim compensation programmes have been advanced in victimological literature in the West.

The scientific study of victimology can be traced back to the 1940s and 1950s. Two criminologists, Mendelsohn and Von Hentig, began to explore the field of victimology by creating "typologies". They are considered as the fathers of the study of victimology. These new "victimologists" began to study the behaviors and vulnerabilities of victims, such as the resistance of rape victims and characteristics of the types of people who were victims of crime, especially murder victims.

Mendelsohn in 1937 interviewed victims to obtain information, and his analysis led him to believe that most victims had an "unconscious aptitude for being victimized". He created a typology of six types of victims, with only the first type, the innocent, portrayed as just being in the wrong place at the wrong time. The other five types all contributed somehow to their own injury, and represented victim precipitation.

Von Hentig in 1948 studied victims of homicide, and said that the most likely type of victim is the "depressive type" who is an easy target, careless and unsuspecting. The "greedy type" is easily duped because his or her motivation for easy gain lowers his or her natural tendency to be suspicious. The "wanton type" is particularly vulnerable to stresses that occur at a given period of time in the life cycle, such as juvenile victims. The "tormentor" is the victim of attack from the target of his or her abuse, such as with battered women. Von Hentig's work provided the foundation for analysis of victim precipitation that is still somewhat evident in the literature today.

Wolfgang's research of 1958 followed this lead and later theorized that "many victim-precipitated homicides were, in fact, caused by the unconscious desire of the victims to commit suicide". Schafer's theoretical work of 1968 also represented how victimology invested a substantial amount of its energy to the study of how victims contribute, knowingly or unknowingly, to their own victimization, and potential ways they may share responsibility with offenders for specific crimes.¹⁹²⁸

MEANING & DEFINITION OF COMPENSATION

Ubi jus, ibi remedium is the basic principle in the tort that states that there is no wrong without a remedy and the rule of law requires that wrongs should not remain

¹⁹ Dr. Krishna Pal Malik, *Penology, Victimology and Correctional Administration in India*, First Edition, Published by Allahabad Law Agency, Faridabad (Haryana), 2012, p. 210.

unredressed. The compensation constitutes an important remedial measure in tort law and the principles relating to the determination of damages and compensation in tort are well established. There are several dimensions to the issue of payment of damages and compensation in the law relating to torts includes the measure of damages, quantum of damages, assessment of damages, intention of the wrongdoer, proximity of the cause etc.²⁰²⁹

Under the Tort law, in order to claim compensation the tort must be of such a nature as will entitle the plaintiff to recover damages. Where, therefore, the case is of a nature which.²¹³⁰

- a) does not give rise to a right to the plaintiff to recover damages, or to the existence of the liability of the defendant, as where the defendant has committed no wrong, whether a breach of contract or a tort, or
- b) does not occasion any loss or damage, or no cause of action accrues to the plaintiff, as when he himself is at fault or the damages are too remote, or he has failed to mitigate his damages.

Compensation cannot be granted:

Thus, the plaintiff cannot recover that part of the loss²²

- a) which is due to his own contributory negligence; or
- b) of which the defendant's conduct is not the cause; or
- c) which is not within the scope of the protection of the particular contract or tort; or
- d) which he should have avoided or mitigated; or
- e) which is too uncertain; or
- f) which is past or prospective, that is, is too remote.

However, the term “Compensation” in present context means amends for the loss sustained. Compensation is anything given to make things equivalent, a thing given to make amends for loss, recompense, remuneration or pay.²³ It is a sign of responsibility of the

²⁰ Mundrathi, S., Law on Compensation- To Victims of Crime and Abuse of Power 182, Deepand Deep Publications, New Delhi, (2007)

²¹ The Criminal Amendment Act, 2008.

²² The Criminal Amendment Act, 2008.

²³ *State of Gujarat v. Shantilal*, AIR 1969 SC 634 at 644.

society which is civil in nature representing a non-criminal purpose and end.²⁴ Compensation, as distinct from damages²⁵ is used in relation to a wrongful act, which cause the injury.²⁶ Literally, compensation means the money which is given to compensate for loss or injury, whole purpose of compensation is to make good the losses sustained by the victim of crime or by the legal representative of the deceased or who has suffered of pecuniary loss or non-pecuniary loss. Compensation to the victims of crime means something given in recompense i.e. equivalent rendered. It is to be note that the whole purpose of compensation is to make good the loss sustained by the victim or legal representative of the deceased. Generally the term compensation limits itself to monetary compensation which is calculated on the basis of two head i.e. pecuniary loss and non-pecuniary loss.²⁷

In the words of the Hon"ble Orissa High Court in *Saraswate Parabhai v. Grid Corp. of Orissa*,²⁸⁴⁰

“It is true that perfect compensation is hardly possible and money cannot renew a physique frame that has been battered and shattered, as state by Lord Morris in West v. Shephard⁴¹. Justice requires that it should be equal in value, although not alike in kind. Object of providing compensation is to place claimant as far as possible in the same position financially, as he was before accident. Broadly speaking in the case of death basis of compensation is loss of pecuniary benefits to the dependants of the deceased which includes pecuniary loss, expenses, etc. and loss to estate. Object is to mitigate hardship that has been caused to the legal Compensation awarded should not be inadequate and should neither be unreasonable, excessive, or deficient. There can be no exact uniform rule for measuring value of human life and measure of damages cannot be arrived at by precise mathematical calculation but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor it should be a source of profit of the person in whose favour it is awarded.”

In *Shantilal case*²⁹ and *Smt. P. Ramadevi v. C.B. Saikrishna*,³⁰ Supreme Court of

²⁴ Devasia, V.V. and Devasia, L. Criminology, Victimology and Corrections 97, Ashish Publishing House (1992)

²⁵ Is used to mean the recovery of pecuniary recompense awarded in reparation for loss or injury.

²⁶ *General Manager, Kerala State Road Transport v. Saradhamma*, 1987 ACCJ 926 Kerala.

²⁷ Randhawa, G.S., Victimology and Compensatory Jurisprudence 166-167, Central Law Publications, Allahabad (2011)

²⁸ *Saraswate Parabhai v. Grid Corp. of Orissa*, AIR 2000 Ori 13

²⁹ *State of Gujarat v. Shantilal*, AIR 1969 SC 634

³⁰ *Smt. P. Ramadevi v. C.B. Saikrishna*, AIR 1994 Kant 8 (12)

India held that the compensation is anything given to make things equivalent, a thing given to make amends for loss, recompense, remuneration or pay. Therefore compensation means an act of the court which orders a certain sum of money which a court orders to be paid, by a person whose acts or omissions has caused loss or injury to another in order that there by the person demnified may receive equal value for his loss or be made whole in respect of his injury.

Article 9 (5) of the International Covenant on Civil and Political Rights, 1966 states:-

“any one who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation”.

The content of this Article 9 (5) is that the victim will have an enforceable right to compensation.

In *Baker v. Willoughby*,³¹ it has been considered that “A man is not compensated for the physical injury, he is compensated for the loss, which he suffers as a result of that injury. Inabilities, which leads full life, and inability to enjoy those amenities, which depends on freedom of movement and inability to earn as much as is used to earn or could have earned. In *State of M.P. v. Pehlajraj Dwarkadas*,³² the court observed that the term “*compensation*” has to be read as a synonym for “*damages*”, the word “*compensation*” is only a recompense for the pecuniary loss suffered by the victims and, the words “*compensation*” and “*damages*”, in this context have been known and used as synonymous in the law of tort. In England observations have been made under which it seems that perhaps, there would be a distinction between words “*compensation*” and “*damages*” though in England, these words have often been treated as synonymous terms. But in India, Legislature has deliberately not used the English term of “*damages*” rather has used the word “*compensation*”.

However, the word reparation, restitution and damages have been used in relation to compensation in judiciary. Reparation refers to the action of compensating the wrong doing and damages done. The term restitution means the responsibility borne by the offender towards the victim by restoring his/her position and rights that are damaged or destroyed. The word “*damages*” is often used for recovering the pecuniary recompense awarded in reparation for loss or injury caused by a wrongful act or omission or used for the pecuniary

³¹ *Baker v. Willoughby*, (1969) 3 All ER 1528.

³² *State of M.P. v. Pehlajraj Dwarkadas*, AIR 1976 MP 208.

reparation due to loss or injury sustained by one person through the fault, negligence of another. In operation of case, namely, *Klaus Mittelbachert v. East India Hotels Ltd*³³.

“A man has a legal right in his own life. As he has a legal interest entitling him to make a complaint if the integrity of his life is impaired by tortious acts not only in regard to pain, suffering and disability, but also in regard to continuance of life for its normal expectancy. A man has properly a legal right that his life should not be shortened by tortious act of another. His normal expectancy of life is a thing of temporal value, so that its impairment is something for which damages should be given to that.”

In *Halbutt 's Plasticine Ltd. v. Wayne Tank and Pump Co. Ltd.*³⁴

“Each and every case depends on its own facts. It being remembered, first, that the purpose of the award of damages is to restore the plaintiff to his position before the loss occurred or damage caused and secondly, that the plaintiff must act reasonably to mitigate his loss. If the article damaged is a motor car of popular make, the plaintiff cannot charge the defendant with the cost of repair when it is cheaper to buy a similar car in the market. On the other hand, if no substitute for the damaged articles is available and no reasonable alternative can be provided, the plaintiff should be entitled to the cost of repair in the eye of law.”

Compensation to Victims of crimes can be awarded by Courts under Section 357 of the Criminal Procedure Code, 1973 (Cr.PC) from the fine recovered as part of the sentence. In 2009, Section 357A was added to the Cr.PC, under which each State Government, in coordination with the Central Government, is required to formulate a scheme for compensation to Victims of crime or their dependants. Under this, a Victim can get compensation for rehabilitation in cases in which the Court finds it necessary.

The compensation can be recommended even in cases where the trial ends in acquittal or discharge, provided there is a need for rehabilitation of Victims. Compensation can also be granted where no trial takes place because the offender cannot be identified or traced but the Victim requires rehabilitation. Thus, while under Section 357 Cr.PC, a Victim is entitled to compensation only on conviction, compensation under Section 357A is not necessarily linked to conviction. From the information available, States are in the process of preparing such a scheme. A Victim of crime has hardly any guaranteed right except may be of getting some assistance by way of payment of compensation, but even here the statutory

³³ *Klaus Mittelbachert v. East India Hotels Ltd*, AIR 1997 Del 201

³⁴ *Halbutt 's Plasticine Ltd. v. Wayne Tank and Pump Co. Ltd.*, (1970) 1 All ER 225 at 240

provisions are grossly inadequate. These provisions suffer from inherent limitations also about the extent of fine, capacity of the criminal to pay and the like.

Similarly, Section 250 (compensation for accusation without reasonable cause), Section 357³⁵ (order to pay compensation out of fine or even without a sentence of fine), Section 358 (compensation up to Rs 100 to persons groundlessly arrested) and Section 359 (order to pay cost in non-cognisable cases) of Cr.PC, 1973, provide for payment of compensation and costs to the Victims of crime under different circumstances. Section 358 of the Code, provides for a small compensation payable to an illegally arrested person by any other person who causes a police officer to arrest him. What is noteworthy is that a prosecution is the *sine qua non* for an order of compensation. Thus, if there is no prosecution or no sentence, there can be no compensation.³⁶ Similarly, compensation may be paid at the sentencing stage to persons who are, under the Fatal Accidents Act (13 of 1855), entitled to recover damages from the convict.

RIGHTS OF VICTIMS IN THE INDIAN CRIMINAL JUSTICE SYSTEM

The adoption by the General Assembly of the United Nations, at its 96th plenary on November 29, 1985 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power constituted an important recognition of the need to set norms and minimum standards in international law for the protection of victims of crime. The U.N. Declaration recognised four major components of the rights of victims of crime – access to justice and fair treatment³⁷; restitution,³⁸ compensation³⁹ and assistance. In the first part of this piece it is proposed to examine how far the prevailing legal framework in India conforms to the norms and standards that were sought to be set by the U.N. Declaration

³⁵ Section 357 empowers the Court imposing the sentence to order the whole or part of the fine, if any, imposed to be applied in the payment to any person of compensation for any loss or injury caused by the offence, provided such compensation is recoverable in a civil Court.

³⁶ Dr. Justice A.S. Anand, "*Victims of Crime - the unseen side*", (1998) 1 SCC (Jour) 3.

³⁷ Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms."

³⁸ This contemplates deprivations both by State and non-State actors. Under Clause 8 of the U.N. Declaration, restitution includes "the return of property of payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights." Clause 11 provides that "where the government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims."

³⁹

⁵⁴ Under Clause 12 of the U.N. Declaration the onus is on the state to "endeavour to provide financial compensation to both victims who have suffered bodily injury or impairment of physical or mental health as a result of serious crimes as well as the family of those who have died as a result of victimization."

nearly two decades ago. It also notices relevant judicial dicta that have sought to address the needs of the victims of crime. In the second part the prevailing international trends and recent local developments are briefly noticed. The concluding part offers certain suggestions as regards the nature of the changes that are required in order to make the system respond effectively to the needs of victims of crime.

Access to Justice and Fair Treatment

The victim of a crime sets the criminal justice mechanism in motion by giving information to the police which is expected to reduce it to writing⁴⁰. The victim as an informant is entitled to a copy of the FIR “forthwith, free of cost”. Where the officer in charge of a police station refuses to act upon such information, the victim can write to the Superintendent of the Police who is then expected to direct investigation into the complaint.⁵⁸ Failing these mechanisms, the victim can give a complaint to a Magistrate, who will in turn examine the complainant on oath and enquire into the case herself or direct investigation by the police before taking cognizance. The victim thereafter does not participate in the investigation except by being called to confirm the identity of the accused⁶¹ or the material objects, if any, recovered during the course of investigation

The position of victims who happen to be women or children has not merited the attention it deserves in the procedural statute. The protection under s.160 Cr. PC that “*no male person under the age of 15 years or women shall be required to attend any place other than the place in which such male person or woman resides*” does not apply to a woman or a child who is picked up as a suspect. The plight of rape victims is compounded by their being held in “protective custody” in jails or in the nari niketans (women's shelters), on the pretext that they are required for giving evidence although such detention has no legal basis.

The law's response to the needs of victims of rape and other violent crimes against women has been both predictable and inadequate. In imposing severe and minimum punishments⁶⁴ for the offence and in shifting the burden of proof, the law fails to address the needs of the victim to be treated with dignity, to sustained protection from intimidation, to readily access the justice mechanisms, to legal aid and to rehabilitation. There is yet no provision in the law mandating “in-camera” trials particularly when the victim is a child. There is also no statutory scheme recognising the rehabilitative needs of the victims of rape.

⁴⁰ S.154 (1) of the Code of Criminal Procedure, 1973 (Cr. PC). This is registered as the first information report (FIR).

The legislative and executive apathy to the problem stands in contrast with the response of the Supreme Court in *Delhi Domestic Working Women's" Forum v. Union of India*.⁴¹ The case arose out of an incident in which six women, working as domestic servants in Delhi, were raped by eight army personnel in a moving train between Ranchi and Delhi. The members of the petitioner forum, when prevented by the employers from meeting the victims, sought the court's directions for expeditious and impartial investigation of the offences. The court indicated the following "broad parameters for assisting the victims of rape".

Victims of Custodial Crimes

The constitutional right of a victim of custodial crime to receive compensation was reiterated by the Supreme Court in *Nilabati Behera v. State of Orissa*⁴². The court pointed out that it was not enough to relegate the heirs of a victim of custodial violence to the ordinary remedy of a civil suit. The right to get relief of compensation in public law from courts exercising their writ jurisdiction was explicitly recognised. This was further developed in *D.K. Basu v. State of West Bengal*,⁴³ where it was explained that "the award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is law- fully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the state... the relief to redress the wrong for the *established* invasion of the fundamental rights of the citizen, under the , under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them."

In order to develop a comprehensive statutory scheme redressing the needs of victims of crime, it may be useful to examine some of the current practices elsewhere. The European Convention on Compensation of Victims of Violent Crime, 1983 provides for many of the rights recognised in the U.N. Declaration. The statutes on the topic in certain other countries include the Criminal Injuries Compensation Act, 1995 in the United Kingdom, the Victims of Crime Assistance Act, 1996 of Victoria in Australia, and the Victims and Witnesses Protection Act, 1982 of the USA⁴⁴. Courts in some of these countries make use of a "victim

⁴¹ *Delhi Domestic Working Women's" Forum v. Union of India*, (1995) 1 SCC 14.

⁴² *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746.

⁴³ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416

⁴⁴ Despite many states creating programmes responding the needs of victims of crime which include restitution by the offender, compensation by the state, assistance by government and private organisations and the

impact statements” to take on board the victim's feelings regarding the offence. Outside of the formal legal system, there are associations formed in some of the countries, which are central to the provision of all forms of the assistance to victims of crime.

South Africa has enacted a Witness Protection Act, 1998 (WPA) which provides, inter alia, for the establishment of a central office for witness protection, which will function under the control of the Minister of Justice and Constitutional Department. This office will be responsible for the protection of witnesses in terms of the WPA and regulations made in terms thereof, and will perform all duties relating to protection of witnesses. It may be recalled that simultaneous with the making of the Constitution of South Africa, a Truth and Reconciliation Commission (TRC) was also established. One of the key functions of the TRC was to examine the claims of victims of the apartheid regime to compensation.¹¹⁵ An important aspect of the functioning of the TRC, as explained by one of its members, Justice Albie Sachs, was to give the victim a voice and encourage a dialogue between the victim and the perpetrator. He explains that “if you are dealing with large episodes, the main concern is not punishment or due compensation after due process of law, but to have an understanding and acknowledgment by society of what happened so that the healing process can really start. Dialogue is the foundation of repair.”⁴⁵

JUSTIFICATION FOR VICTIM COMPENSATION

Victim compensation is a novel idea and if successfully meted out it retains the equity between the injured and the injurer. Victim's ego gets satisfied and he feels sense of belongingness and security in the society. The modern world has almost discouraged the reimbursement to the victim by offender or his family because the state sponsored punishment supplanted victim and family reparations.

The restitution has replaced by punishment.⁴⁶ As justice should not only be done but it must be seen to have been done, therefore according to punishment to the offender or violator of the rights be it may legal rights, fundamental rights or human rights, of an individual is just the former part of justice i.e. the justice has been done by punishing the

promulgation of “bills of rights”, the actual implementation of these schemes appears to have not been adequate: See LeRoy L Lamborn “The Constitutionalisation of Victims' Rights in the United States: The Rationale” in Kirchhoff et al (eds.) *International Debates of Victimology*, WSV Publishing (1994), 280

⁴⁵ Albie Sachs. The Fourth D.T. Lakdawala Memorial lecture. “Post-Apartheid Africa: Truth, Reconciliation and Justice”. Institute of Social Sciences 37 – 38 (mimeo)

⁴⁶ Rai, H.S. “Compensation Jurisprudence and Victims of Crime” 334, Cr.L.J, (2004).

culprit. But the later part that it must be seen to have been done still requires something more to be done. It requires just not only punishment to the accused but caring for the victim and protection of his rights and supporting him in times of distress.

The idea of victim and compensation to such victim is not new but was existing in the ancient time, which got lost in the later period when the state emerged focusing primarily on retribution on behalf of a victim by itself. The later criminal justice system due to its" over emphasis on the offender and his rights, lost right of the victims. After Independence, we the people of India devised for our self and excellent piece of state craft in the form of constitution of India, wherein due to the commitment to the human dignity, we classified certain rights as fundamental rights was done and granting of power to the various wings governing "we the people" under the expectation that they shall never toy with these basic rights, took place.

Apart from it, India became signatory to various international covenants and conventions with regard to the human rights which also warrant the state to take care of the human rights and other rights mentioned therein which are primarily indispensable so far as the human being is concerned.

UNDERSTANDING THE PROBLEM IN VICTIM COMPENSATION

In today's era of victimological research, there has been a substantial growth in interest to study the impact that crime has on victims and the various ways to assist them. Providing compensation and support services are considered ways of assisting the victims of crime. In recent past, there has been a development with regard to providing compensation to victims of crime. Compensation means a formal administrative procedure provided by law which provides only money to victims for "out of pocket" real expenses directly resulting from the victimization to be paid by the state after the victim is found to qualify according to specific criteria determined by the respective state. One theory which has been advanced in support of proposals for legislation involving compensation by the State to victims is that the State has a duty to protect its citizens from crime and that if it fails to do so it incurs an obligation to indemnify those who are victimized. There is a felt need to redress the issues of victims of crime. Victims of crime have a right to justice, to make good the harm that resulted because of a crime. These rights of the victims are not similar to the right to retribution, the responsibility of which has been assumed by Rule of Law. When there is a

failure in the part of the State in discharging such responsibility, the State needs to provide a mechanism which will ensure the victims compensation for their injury and are given assistance by way of support services. By victim support services we mean the activities that are applied as a response to the victimizations with an intention to provide relief to the suffering and to facilitate recovery.

AIMS AND OBJECTIVES OF THE RESEARCH

The specific objectives of the study are:

- To review relevant literature and research on the criminal justice system and victim compensation and restitution
- To analyze the legal and policy frameworks for compensating and restoring victims within the criminal justice system
- To evaluate the implementation and outcomes of victim compensation and restitution programs in practice
- To identify the barriers and challenges faced by victims seeking compensation and restitution within the criminal justice system
- To develop recommendations for improving the effectiveness and fairness of victim compensation and restitution within the criminal justice system.

HYPOTHESES

Taking into account the research problems and the objectives of the study, as stated above, the following hypotheses are formulated for this research study:

1. The existing compensation and restitution programs for victims in the criminal justice system are not fully meeting the needs of victims.
2. The implementation of compensation and restitution programs is hindered by systemic issues, such as inadequate funding, limited eligibility criteria, and bureaucratic hurdles.
3. The current compensation and restitution programs tend to prioritize the needs of the state and criminal justice system over those of victims, further marginalizing victims and perpetuating systemic inequalities.

4. By adopting a more victim-centered approach, the criminal justice system can not only better serve the needs of victims, but also improve the overall fairness and effectiveness of the system.

METHODOLOGY OF THE STUDY

The methodology adopted by and large is Doctrinal Method based on the theoretical investigation to find the answers to the questions posed in the research problem and to verify the hypotheses formulated. The data collected through doctrinal research methodology, it is forming both primary as well as secondary sources. For the completion of this study, the Researcher has tried to analyze the topic by studying various Acts of Parliament and State Legislatures, Case Laws, Books, Law Reports, Journals, Articles, Newspapers, Web references etc. The Researcher has organized the study around the formulated propositions. The Researcher while carrying out the research has relied on secondary sources. Thus Researcher has adopted a uniform mode of citation. The data consists of provisions provided by National Statutes and International Conventions on Human Rights etc., the Constitution, case laws and it includes a critical analysis of the Statutory Provisions, Law Commission of India Reports and the provisions of Criminal Procedure Code, 1973. The secondary data contains various research papers, text books, articles by eminent professionals, print as well as electronic media and from internet source etc., A necessary part of study is the study of global position with respect to criminal justice which has provided the scope for making the study comparative and analytical. The research has also been performed by descriptive method to form a sound base for the further application of the analysis of research. The method has been used to describe the present state of affairs and the different Laws, and their nature, with the main focus being on the Criminal Law dealing with the subject matter of the research. The analytical approach has been followed to make a critical evaluation of the findings of the above stated method. The improvisations and suggestions have been made by this technique. The Researcher has attempted to conduct the research through analysis of secondary sources of data and the study is exploratory as well as explanatory in nature. Thus the present study is mainly analytical and comparative.

SCOPE AND LIMITATIONS

This study of “Victim Compensation Under Criminal Justice System – Constitutional And Legal Perspectives” is presented in seven chapters. These chapters are framed in accordance with the research objectives. Thus, the present research work is confined to the compensation to victims of crime with reference to the provisions as to Code of Criminal Procedure 1973 and other Special Criminal Acts.

Crime affects the individual victims and their families. Many crimes also cause significant financial loss to the victims. The impact of crime on the victims and their families ranges from serious physical and psychological injuries to mild disturbances. One area which is totally overlooked is the plight of the victims. It is a recent trend in the sentencing policy to listen to the wailings of the victims. Rehabilitation of the prisoner need not be by closing the eyes towards the suffering victims of the offence. A glimpse at the field of victimology reveals two types of victims. The first type consists of direct victims, i.e. those who are alive and suffering on account of harm inflicted by the prisoner while committing the crime. The second type comprises of indirect victims who are dependant of the direct victims of crime who undergo suffering due to deprivation of their bread winner⁴⁷².

The victims have right to get justice, to remedy the harm suffered as a result of crime. This right is different from and independent of the right to retribution, responsibility of which has been assumed by the State in a society governed by the Rule of Law. But if the state fails in discharging this responsibility, the State must still provide a mechanism to ensure that victim's right to be compensated for his injury is not ignored or defeated. Increasingly the intention of criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimization and protection of victims of crimes. Crime often entails substantive harms to people and not merely symbolic harm to the social order. Consequently the needs and rights of victims of crime should receive priority attention in the total response to crime. One recognized method of protection of victim is compensation to victims of crime. The needs of victims and their family are extensive and varied⁴⁸.

In recent years, the phenomenon of “victim rights” has been catapulted to the forefront of policymaking on both domestic and international platforms. While the criminal

⁴⁷ *State of Gujrat v. Hon'ble High Court of Gujrat* (1998) 7 SCC 392.

⁴⁸ The 154th Law Commission Report on the Cr. PC.

justice system has traditionally been conceptualized as a mechanism for the State to resolve its grievances against suspects, defendants and offenders, it is now broadly accepted that justice cannot be administered effectively without due recognition of the rights and interests of other parties affected by the criminal action. This shift has affected the extent to which their interests are represented in the formulation of criminal justice policy, in that increasing number of initiatives are undertaken in the name of victims, seeking to bolster their position within the system. These developments raise a number of key questions and fundamental issues concerning the structural and ideological basis of our criminal justice system, not least as to whether the very concept of “victims right” is inherently compatible with a system that is ideologically constructed as bipartisan contest between the State and the accused.⁴⁹

The Principles of Victimology has foundations in Indian Constitutional jurisprudence. The provision of Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) form the bulwark for a new social order in which social and economic justice would blossom in the national life of the country (Article 38). Article 41 mandates *inter alia* that the State shall make effective provisions for 'securing the right to public assistance in cases of disablement and in other cases of undeserved want). So also Article 51 A makes it a fundamental duty of every Indian citizen, *inter alia* to have compassion for living creatures and to develop humanism. If emphatically interpreted and imaginatively expanded these provisions can form the constitutional underpinning for victimology.⁵⁰

In every civilized country a criminal commits the crime and the State apprehends the offender and brings him to trial. If, he found guilty then he is convicted and sentenced to undergo any form of punishment. At this juncture, some questions arise in mind. Does this complete the wheel of criminal justice? If yes, then what about the crime victims? Traditionally, it may have been sufficient that the criminal is caught and punished. But, the modern is to also focus on the victims of crime. It is all very well that the accused is given a fair and just trial, that the guilty are punished, that the convicts and prisoners are given a humane treatment, that jail conditions are improved and the erstwhile criminals are rehabilitated, but, what about the crime victim? In response to this, the Hon^{ble} Supreme Court⁵¹ has observed:

“In our efforts to look after and protect the human rights of the convict, we cannot forget the

⁴⁹ Jonathan Doak, *Victim Rights, Human Rights and Criminal Justice. Reconceiving the Role of the Third Parties*, Oxford and Portland, Oregon, 2008. P. 1

⁵⁰ *Suresh & Ans v. State of Haryana*, 2014 (8) Supreme 289.

⁵¹ *State of Gujarat v. Hon^{ble} High Court of Gujarat*, (1998) 7 SCC 392.

victim or his family in case of his death or who is otherwise incapacitated to earn his livelihood because of the criminal act of the convict. The victim is certainly entitled to reparation, restitution and safeguard of his rights. Criminal justice would look hollow if justice is not done to the victim of the crime. The subject of victimology is gaining ground while we are also concerned with the rights of the prisoners and prison reforms. A victim of crime cannot be a "forgotten man" in the criminal justice system. It is he who has suffered the most. His family is ruined particularly in case of death and other bodily injury. This is apart from the factors like loss of reputation, humiliation, etc. An honor which is lost or life which is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace".

Chapter 2

Victim, Victimization and Victimology - Conceptual Developments

Chapter 2

VICTIM, VICTIMIZATION AND VICTIMOLOGY - CONCEPTUAL DEVELOPMENTS

INTRODUCTION

Historically, victims have received erratic treatment in different ages, eras and governing systems. There was a time when the victims' rights were at the zenith. In ancient system, victims were the backbone of whole criminal justice system. This period is considered as the golden age¹ for the victims as they enjoyed a dominant role and recognition in the criminal justice dispensation process. An emphasis was given for due consideration to compensation, recognising his right to physical and economic well-being in the terms of human dignity.² The variations in the treatment meted out to the victim, relates to the historical evolution of legal concepts of crime and punishment as well as diverse approaches to the interpretation of such notions concerning the victims' importance, and their visibility and invisibility in human societies. Therefore, position of the victims and the remedies provided in any form has varied greatly from time to time and system to system.

-What about the victims⁵² of crime? This very question presses for advocating justice to the victims of crime. Plights of the victims of crime are not new. Rather it is an old one. However, concern regarding justice to victims of crime is a new one.

In the early human civilization, -retribution was the only aspect of punishment to be taken into consideration⁵³ Law was designed in order to compensate the victim and not for punishing the accused. The -penal law of ancient communities is not the law of Crimes, it was the law of Wrongs, or, to use the English technical word, of Torts. The person injured proceeds against the wrong-doer by an ordinary civil action, and recovers compensation in the shape of money-damages if he succeeds. However, in the ancient Hindu Law, it was the punishment of crimes that occupied a more important place than the compensation for wrongs.

In research, to develop a concept into a new legal thought, it is better to place the

⁵² Schafer, Stephen (1960), *Restitution to Victims of Crime*, London: Stevens & Sons Ltd

⁵³ A.Hamid, *Victim Of Crime: A Need Of Nemesis in GLOBAL PERSPECTIVES INVICTIMOLOGY*, 326, 326 (S.P.Singh Makkar, and P.C.Friday ed(s)., 1993)

concept into a historical line of scientific development. In this context it is pertinent to analyze the evolution of victims of crimes so as to better understand the plight of victims of crimes; and certainly it has practical reasons so as to understand important contributions of those who dealt with similar topics before and also to know in whose shoulders we stand on.

A historical analysis of victim justice system is an arduous task. With a large wealth of sources to draw from, it requires historical judgment as to what to include and what not. Since the history of all criminal justice systems is beyond the scope of this work, the author draws from historical and other sources that best explain the evolution of the current system. The source of victim history has to be churned out from the history of criminal justice system. Many of the existing studies have taken a historical approach to compensation, and considered altogether, the study can be viewed as a chronicle of the development of victim compensation. Consequently, the literature review will clarify the evolution of such plans, as well as thoughts, theories, controversies and modern day manifestations. The historical evolution of victim compensation follows different timelines and different tracks in the Global and the Indian scene. In the forthcoming paragraphs of the study first trace the history of victim compensation in the global scenario and secondly lay a special emphasis on the historical development in India.

The development regarding the necessity of protecting, promoting and supporting the victims of crime can be divided into three stages. The first stage was the establishment of monetary support for the victims of crime (1960s). The second stage was the strengthening of immediate and direct support for the victims of crime (1970s). The third stage brought about enactments of statutes for the purpose of improving the legal status and establishing rights of the victims of crime⁵⁴.

ORIGIN OF VICTIM COMPENSATION IN WORLD

Position of Victims in the Ancient Era

The notion of legal life in primitive cultures relied on unwritten customs that often were more rigid than written law. The first stage in the evolution of law was personnel revenge. The ancient societies allowed private disputes to be settled in a personnel manner i.e. 'redressal' for personal wrongs was in the hands of the individual, as he was alone in his struggle for existence. As he single-handedly faced the attacks and harms caused to him by externals, he had to take the law into his hands and punish the aggressor in accordance with

⁵⁴ See available at <http://www.unafei.or.jp/english/pdf/PDFNewsletters/143.pdf>

the prevailing methods accepted by his society. He carried out the punishment in form of revenge aimed at deterrence and compensation. The revenge was and compensation was exclusively personal.

An offence against individual was an offence against his clan or tribe, and although the punishment to be exacted from the offender was neither codified nor always standardised by the committed offence, some form of compensation or restitution was invariably involved in the relationship between the victim and the criminal injury to the individual person wherever it was asserted, and was scaled in accordance with the seriousness of the crime, nature of the crime, the relative class, positions of the parties, the personal tempers and reputations of the criminal and his victim. The justice was imparted according to the wishes of victims and they were alone competent of exonerating their offenders. But, later on, due to the emergence of adversarial system in 16th century, their role was reduced to a considerable length. The victim has become a mere tool for operating criminal justice system. During the mid-21st century, particularly in Europe and America, victims movements again gained momentum and many social reformers raised

their voice look after the plight of the victims of crime. The roots of the concept of 'victim oriented justice' practices are ancient, reaching back into the customs and religions of the most traditional societies⁷. The particular focus of the restorative practices favored by ancient societies was not to make offenders 'pay', but make reparation to the person and not the State they wronged, building stronger futures at interpersonal levels. Although crime and punishment of today are traditionally associated, the historical review of compensatory ideals shows that this has not always been the case in the past⁵⁵. In fact, some have claimed that the restorative justice values are grounded in traditions of justice as old as the ancient Greek and Roman civilizations. Most legal scholars agree that for centuries justice systems recognized the value of victims and their recovery from harm perpetuated by offenders. The details of restorative justice's implementation in the justice systems of the early societies is documented in a number of other historical sources, many of which indicate that punishment, in today's sense, was the exception rather than the norm. The practice of individual compensation served as a substitute for the death penalty during 400 B.C.

The code of Hammurabi instituted by the king of ancient Babylonia, is one of the oldest legal

⁵⁵ Gavrielides, Theo (2011), –Restorative Practices: From the Early Societies to the 1970, Internet Journal of Criminology, [Online: Web] Accessed on 20 March 2019, URL: https://docs.wixstatic.com/ugd/b93dd4_b68b3e905ddb480695a6a7c703d13630.pdf.

codes and almost generous in compensating victims and reveals a society with a system of strict justice. Penalties for criminal offences were severe and varied according to social class of the victim⁵⁶. This code may have been the first 'victims' rights statute' in history. The importance of the code was its concern for the Rights of Victims. The significance of the code discussed below.

The Code of Hammurabi

The code of Hammurabi of Babylonia imposed following obligations on the citizens and the state:

- a) The state had the power to punish the offender. The blood feuds that have occurred previously between private citizens were barred under the Code.
- b) The Code also ensured the protection of the weaker from the stronger. Widows were to be protected from those who might exploit them, elder parents were protected from sons who would disown them, and lesser officials were protected from higher ones.
- c) The Code restored equity between the offender and the victim. The victim's grievance was more or less redressed and he or she was required to forgive vengeance against the offender.

In Babylon, each crime carried different restitution; for e.g., a theft victim was not repaid with goods but paid the value of goods. As per the code of Hammurabi the theft of goods in transit was punishable with a fine of five times the value of the goods which is payable to the owner (Office of Victims of Crimes); the embezzlement of a merchant's money by one of his employees required a three- fold payment (Office of Victims of Crimes); and stealing from priesthood of State, a more serious offence, could only be repaid by the death of the offender as punishment. If a thief was not apprehended, even then the Babylonian state restored the property of the victim, provided the victim had itemized his property in the presence of God⁵⁷.

⁵⁶ In ancient Babylonia, there were three classes, or social groups: free men, who were the wealthiest and most powerful class; citizens or common men; and slaves. The reverse was also true. See Gordon (1957); See also The History Guide (2009).

⁵⁷ Barke, J. L. (1978), *We All are Victims*, London: Peel Press. Pg. 171.

If the robber is apprehended, then he who was robbed shall claim under oath the amount of his loss; then the community on whose ground and territory victim
Compensation in the Medieval Period

Before the Anglo Saxon period, two races Celts and Romans dominated England. They had their own customary laws to decide the cases related to civil and criminal offences. The Anglo-Saxon legal system was originally a system of tribal justice. From 449 A.D to 800 A.D Anglo Saxon tribes invaded England and settled there. The old legal codes were recorded from the time of Aethelbert of Kent on 570 B.C.⁵⁸ and a complete record of the changes which occurred in the legal system is made available. The Kentish laws of Aethelbert contained specified amounts of compensation for a large number of crimes ranging from murder to adultery.

Anglo – Saxon Laws

Prior to the Norman conquest of 1066 A.D., the legal system in England was much decentralized. There was little written law except for crimes against society. Anglo Saxon England⁵⁹ did not have a professional standing law enforcement body analogous to modern police. If a crime was committed then there was a victim, and it was up to the victim - or the victim's family - to seek justice. As a society, England had forgotten or moved away from the teaching of the Code of Hammurabi, and crimes during this period were again viewed as personal wrongs. Compensation was paid to the victim or his/her family for the offense. If the perpetrator failed to make payments, the victim's family could seek revenge resulting in a blood feud. For the most part during this period, criminal law was designed to provide equity to what was considered a private dispute.

Outlawry

The characteristic of ancient laws was that law was weak, and its weakness was displayed by a ready recourse to outlawry. It could not measure its blows; he who defied was outside its sphere; he was out law. He who broke law had gone to war with the community. Thieves and like offenders would be the persons least able to pay the tariff imposed as

⁵⁸ Aethelbert followed the Roman practice of recording the laws. These laws are a record of AngloSaxon tribal custom, based on the principle of kinship. There is no evidence of borrowing from the Roman legal system. Whenever a migration or invasion occurred the laws were recorded so as to make them familiar to all. The family or kinship group, not the State, was regarded as the injured party (Committee of the Association of American Law Schools 1907: 35-37)

⁵⁹ 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).

-compensationl by the old laws and so for their failure to pay that would be outlawed.

Blood Feud

Where the blood feud was permitted, the community in fact withdrew its protection for the wrongdoer upon certain terms. It was legal permission afforded, provided that no more was sought than was just due. The law simply left it to the private individuals to enforce his rights by self-redressal. But this self-redressal was governed by rules: a man could not choose what vengeance he would extract because this was decided by law. This regulation of self-redress opened the way to imposing a form of compensation, or money price, to be exacted in the place of payment in blood. Even in our earliest law a price is set on life, and in Alfred's day it was unlawful to commence a blood feud until an attempt had been made to extract that sum. Even the slayer himself was to have twelve months for the payment of the wer (blood money) before he was attacked, and the feud was not be prosecuted by harboring him: a breach of his decree was to be cause of outlawry.

Chapter 3
Investigating Challenges and
Opportunities for Reform in
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The Influence of the state power over compensation gradually increased towards the 12th century as a result of which, the position of criminals was somewhat eased. As the central power in the community grew stronger, its share of the compensation for crime also increased. The share was claimed as a commission for the trouble of the community by overlord or king in helping reconciliation between the criminal and his victim. One part of the compensation went to the victim. The State monopolized the institution of punishment; the rights of the injured victim were slowly separated from the penal law, and the original victim of wrong became practically ignored.⁶⁰

The emergence of the concept of Damages

As the life the community became more ordered and the royal authority was less concerned to establish power, the king turned to suppression of minor disorders. In the twelfth century Henry II was able to substitute a simple notion of liability. He set apart certain wrongs as matters for the interference of the crown. Others were peculiarly the concern of the private citizen, though they might entail a fine to the king⁶¹³⁹. According to Pollock and Maitland⁶², this change appeared with remarkable suddenness. In this century three salient features in the law of wrongs emerge. There were a few crimes of wide definition, such as robbery with violence, punishable at discretion with death or maiming. The other crimes were punished chiefly by discretionary money penalties which have taken the place of the old pre-appointed ‘_wite’ while the old pre-appointed ‘_bot’ has given way to ‘_damage’ assessed by a tribunal. Outlawry had grown into a matter of process rather than punishment. An action for damages was a novelty. By an ‘_action for damages’ we mean one in which the plaintiff seeks to obtain, not a fixed appointed by law, but a sum of money which the tribunal, having regard to the facts of the particular case, will assess as a proper compensation for the wrong that he has suffered.

⁶⁰ Schafer, Stephen (1976), Introduction to Criminology, US: Reston Publishing Company 149-150

⁶¹ Schafer, Stephen (1976), Introduction to Criminology, US: Reston Publishing Company.

⁶² Pollock, Frederic and Fredieric William Maitland (1911), The History of English Law Before the Time of Edward I, Vol.1, 2nd ed. (reprinted), Cambridge: CUP.

Victim Compensation under the Islamic Law

Islamic criminal law divides crimes into categories that are distinct from those employed in most common law and civil law countries.⁴¹ The qisas crimes⁴² are particularly interesting for restorative justice studies because the victims retain a central role in the prosecution and sentencing of defendants. In most versions of classical Islamic jurisprudence, the prosecution of the qisas crimes must be instigated by the victim. The victims of *qisas* crimes are given a choice as to the punishment that will be imposed. They may choose to forgive the defendant and demand no punishment at all, or they may demand a payment, known as *diyya* as compensation for the crime.

Furthermore, the law of *qisas* fulfills some of the objectives of the restorative justice movement by allowing victims to participate in sentencing and encouraging forgiveness and reconciliation. There is, however, one glaring difference between the law of *qisas* and restorative justice; the victims of the crimes may also demand retaliation in kind: an eye for an eye, a life for a life. Nevertheless, *qisas* emphasis on forgiveness and inclusion of the victims and the community in the prosecution and sentencing of perpetrators are significant characteristics which warrant an examination of the law of *qisas* as a form of restorative justice.

The *diyya* is the payment of money to the victim of a violent crime. The payment can be made in substitution for the *qisas* penalty at the request of the victim(s) or it can be imposed if any of the procedural or substantive requirements for the imposition of *qisas* have failed.⁴³ The following from the Qur'an verse 4:92 deals with the payment of restitution:

“Never should a believer kill a believer; but by mistake. If one (so) kills a Believer, it is ordained that he should free a believing slave, and pay compensation to the deceased's family, unless they remit it freely”

The following *hadith* also addresses restitution: *Whoever is killed inadvertently as by flogging or beating with a stick or being hit by a stone, his blood-price is a hundred camels.* It is important to note that the victim or the victim's family must insist that the *qisas* penalty be carried out. If any of these standards are not met, the *qisas* penalty will not be applied; in many instances the penalty will consist of *diyya* payment. It is also important to note that the amount of the payment is fixed according to the circumstances of the wound and the person wounded. Although *diyya* is often translated to mean -blood money,|| it can also be seen as restitution. The term -blood money|| carries with it a negative connotation. It conjures up images of gangsters, contract killers, and those who betray the lives of others for

money. It is perhaps for these reasons that *diyya* has been overlooked in the restorative justice discourse. However, the payment of money to the innocent victims or their families has nothing in common with paying the guilty parties for the murder or injury.

Victim Compensation in the Modern world

The Modern legal systems has parted ways with the system of the Middle Ages in two the ascent of monetary and compensatory damages. Today's society generally considers the right to revenge as uncivilized. The law reflects this disapproval by depriving a crime victim of the right to determine the wrongdoer's punishment. Unlike in the Middle Ages, punishing criminal acts today lies exclusively within the domain of the State. As a result, a crime is no longer viewed as a wrong against the victim alone, but as a wrong against society as a whole and the victim is excluded from the process of punishing the wrongdoer. The victim's only option is to sue for compensation in separate civil court proceedings.

In practical operation of old law, it proved very oppressive for offenders and criminals who were used to be tortured and humiliated with oppressive fine. There was no fine balance between the nature of offence and quantity or punishment. It outwardly reconciled the stern facts of a rough justice with a Christian reluctance to shed blood; it demanded money instead of life, but so much money that few were likely to pay it. Those who could not pay were outlawed, or sold as slaves. From the very first it was an aristocratic system; not only did it make a distinction between those who were *'dearly born'* and those who were *'cheaply born'*, but it widened the gulf by impoverishing the poor folk. Hence offender himself became victim of excessive punishment whereas the victim rights remained paramount during this era.

However, the picture began to change with modern criminal justice; the government assumed responsibility for dispensing justice by bringing the offender to book, but it also meant that, with the appropriation of fines to the State coffers, the victim was left with ineffective remedies. Compensations were the means by which humanity moved slowly from the practice of private vengeance to the enforcement of public justice. As the modern State emerged and the government took on itself the responsibility of enforcing justice, the offender gradually became the central figure in the criminal arena. It is, of course, true that the evolution has not been uniform throughout the world; there are countries where eye for eye, tooth for tooth, cutting of the hand for committing theft, and death penalty for adultery still prevail, but they are the exceptions. The general tendency

is the other way. Therefore, with the criminological theories becoming more and more sophisticated, the victim is getting almost forgotten. Victimology seeks to rectify this omission and resurrect the victim from oblivion. It looks at the crime from the victim's point of view.

Historical background of victim compensation in India

The provision of compensation which is being frequently used by courts of different countries and which is considered as a new modern phenomena, is not correct but awarding compensation to victims had a long history. It was a compensation which distinguishes the civil law and criminal law. While the object of civil law is based on the principle of payment of compensation for private wrongs, as a remedy which is pursued through the apparatus setup by the state for that purpose, the system of criminal law functions on the principle of punishing the persons whose behavior is morally culpable. In other words, the very goal of the civil law system is to provide compensation for private wrongs but whereas the system of criminal law aims at punishing the persons whose behavior is morally culpable⁶³. It means that purpose of civil is compensation and the purpose of criminal justice is punishing the wrongdoer.

Now this very difference between civil and criminal law has been diluted and compensation is being awarded as a matter of right not in criminal law but also in constitutional law, environmental law and for violation of human rights etc.

The evolution of this concept can be traced both historically and theoretically. There is evidence to indicate that certain categories of the victims of crime were compensated in the older times either by the offender or his kinsmen, or by the sovereign. In earlier law, an injured person or the relatives of one killed could exact a similar blood feud from the wrongdoer or his kin. Later it was accepted that Blood-Money could be paid in lieu of pursuing the Blood-Feud.

(Blood money means money penalty paid by a murderer to the relative of his victim.) Early legal system, commonly move from allowing blood feud to allowing and then requiring payment of blood money, and commonly specify in some detail in the amounts payable for causing the death of a injuries to victims of various degrees. Through the injured person or the relative was allowed by law the option of taking money or taking blood, and certain offence, for example treason were bottles or irredeemable and were punishable by death

⁶³ Hall, Objectives of civil and Criminal Laws 1943; 13:753

mutilation & forfeiture of the offender's property to the king the money value set on a man according to his rank.

In the primitive societies the responsibilities of protecting one-self against crime and of punishing the offenders vested with the individuals which reflected the idea of private vengeance. Under this system compensation had to be paid by the wrong doer to the injured persons. As societies got organized in the form of state, the responsibility of punishing the violators of criminal law shifted from the hands of private individuals to the hand of political authorities. The principle however continued where compensation is being paid by the wrong doer to the victim or his family members. This was the position, obtaining from the old Germanic law the code of Hammurabi, law of Manu, and Ancient Hindu Law and Islamic Law. This was even confirmed by renowned jurist Sir Henry Maine

-The penal law of ancient communities is not the law of crimes, it is the law of wrongs the person injured proceeds against the wrong doer by an ordinary civil action and recovers compensation in the shape of money damaged if he succeeds.

A prisoner, be he a convict or under trial or a detenu, does not cease to be a human being. Even when lodged in jail, he continues to enjoy all his fundamental rights including the right to life guaranteed to him under the Constitution. On being convicted of a crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain constitutional rights. In India, the accused has been treated as a privileged person. He gets all possible help from all the corners of the country. Not only does he get defence counsel at the cost of the state at the time of trial but he is also benefited after conviction. Due to over-vigilant NGOs and Human Rights Organizations, the aftercare reformatory and rehabilitative programs for the accused are also on the rise. The punishment can be considered more as treatment, rehabilitation, correction, and re-socialization through probation, parole, and after-care community services. Thus, the lack of victim-oriented jurisprudence causes the deterioration of the conditions of victims and their family members.⁶⁴

Compensatory Justice Jurisprudence in India Various Reports of Law Commission of India, as well as Committees on Reforms of Criminal Justice administration, have played an important role in developing compensatory jurisprudence in India. In order to give prominence in the Indian Penal Code, 1860 to the payment of compensation out of fine imposed and to give a

⁶⁴ Bajpai, K.K. "The History of Compensation of the Victims of Crime" 2006 Cr.L.J. 26(Jr) -Deb, R., Principles of Criminology Criminal law and Investigation, S.C. Sarkar & Sons, Calcutta, 1991

substantive power to the trial court to this effect, the Law Commission of India in its 42nd report (1971) suggested the insertion of a new section in the Penal Code.⁶⁵

The existing provision relating to compensation was inserted in the Code of Criminal Procedure through amendment and its application was expanded. It was provided in the modified Section 357 (545 of old Code) of Criminal Procedure Code, 1973 that, in every case where the new Section 62 of the Penal Code is attracted, but the Court decides not to make an order for payment of compensation out of the fine, it should record its reasons.⁶⁶

Justice R. L. Narasimham, a member of the Law Commission, recommended the deletion of Section 545 (Section 357 New Code) from the Criminal Procedure Code and insertion of a new section in the Indian Penal Code to make improvements in the law concerning payment of compensation by the offender. He felt that Section 357 (Section 545 of Criminal Procedure Code, 1898) is wholly unsatisfactory firstly because, under Section 545, Cr. P.C. (357 New Code) compensation can be given only in money, to the injured party.

There is no provision for direct reparation for the harm caused. Secondly, the procedure involved in the section is circuitous, dilatory, and expensive and caused much harassment to the injured complainant. Besides, it does not cover cases of those accused persons who are unable to pay the fine. The evil effect of short-term imprisonment persists and the complainant also may not be able to derive any advantage as far as reparation is concerned. The 14th Law Commission, in its 156th Report (1997) on the IPC recommended a 'Victim Compensation Scheme' by State governments. It also opined that it wouldn't be appropriate to include the order of payment of compensation by way of punishment.

- "The word Victimology is a new coinage and has gained considerable importance due to the untiring work of Miss Margaret Fry of the John Howard Association of England, Benjamin Mendelsohn, who in 1937 developed a scientific method for the study of the criminal act which utilized biopsychosocial data on the criminal, on the victim and on the witnesses bystanders, and the World Society of Victimology having been himself the victim of discrimination, Mendelsohn became interested in the victim and in his/hers relationship with the criminal." Schafer defines Victimology as "the study of criminal victim relationship". Drapin and Viano define it as "that branch of criminology which

⁶⁵ Sindhu, Sanjay, "Compensatory Jurisprudence Under Criminal Law : Flaws in Existing Laws That Needs Reforms" 2007 Cr. L.J.59 (Jr)

⁶⁶ Singh, S.C., " Compensation and Restitution to the Victims of Crime", 1992 Cr. L.J. 100(Jr)

primarily studies the victim of crime and everything that is concerned with such a victim". In the words of Fattah: "While studying biological, sociological, psychological, and criminological details about the victim -victimology brings into focus the victim-offender relationship and role played by victim." The 7th United Nations Congress on Prevention of Crime and Treatment of Offenders came out with a declaration of basic principles of Justice of Victims of crime and abuse of power, which was later adopted by the U.N.

General Assembly. In the declaration, the

"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 within the Member States, including those laws prescribing criminal abuse of power.

A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. Victims are several times suffering emotionally the most. Compensation to Victims In Crime The reactions to crime have been different at different stages of human civilization.

There is a number of theories available pertaining to 'Reaction to crime'. Important among these theories are the Retribution theory, the Utilitarian theory, Deterrent theory, etc. In common, every theory provides justification for punishment. We can summarize the objects of punishment as: partly of making example of the criminal partly of deterring the criminal from repeating the same act & partly of reforming the criminal by eradicating the evil will and Partly of satisfying society's feeling of vengeance which the act is supposed to evoke.

The law in the early stages of civilization was to compensate the victim and not punish the offender. Narada was the first to recommend compensation to the victims by the offender in order to expiate his sins.

"If we go back to the origin of criminal law, we see that the victim and his family occupy a central position: it is the victim and his family who have the right to request revenge or penitence. However, over the centuries, with the evolution of the state and the organization of

state prosecution, the role of the victim has changed: from his central position the victim has been shifted to a marginal one.

Problems

The basic problem one has to face while dealing with the compensation aspect of the crime is, 'Is compensation for the Damage caused by Crime an objective of the Criminal Process'? A decision on this point is especially important when the judge imposes on the offender various financial obligations like court costs, fines, and compensation to the victim. Which of these obligations should take precedence over others if the offender's financial means are insufficient to satisfy all of them? One more important problem that arises is the financial background of the offenders because often they tend to be poor. If the offender has committed an economic offence then he has the capacity to compensate, otherwise, it is very difficult for the victim to get a sufficient proportion of compensation.⁶⁷

The case of restitution to victims of crime rested primarily on two obligations: an obligation of the criminal who inflicted harm against a person or property and an obligation of the state, which failed to protect the victim. The second obligation is much more important because it is the duty of the state to provide effective security against crime. In India, the trend in this direction is quite good now. The dictum that 'King can do no wrong' is on the wane. Modern welfare society has taken the responsibility to protect its citizens from crime. That is why the punishment aspect solely rests with the state. Though retribution is having a subordinate position in the Indian legal system yet it is trying hard to get its feet moving. In the last few decades, the retribution aspect has found its way into the mainstream of criminal law.

The basic purpose of the United Nations is to protect the human rights of people and to maintain peace in this world. Therefore, for the improvement of humanity, United Nations has been playing a great role in protecting the human rights of the victims of crime. From time to time it has been calling the international conventions, declarations, and other forms of international seminars. One of the most important developments in the field of victimology in the last twenty years has been the formal approval by the General Assembly of the United Nations on November 11, 1985, of the "UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power".

⁶⁷ Mahajan, R.K., "Justice to Victims" 1990 Supreme Court Journal 9(Jr)

In the Declaration the broadest definition of the victim has been given in paragraphs 1&2. The victim is not the person who himself suffered harm physical, emotional or economic loss but the term “victim” also includes, where appropriate, the immediate family or dependants of the direct victim and person who have suffered harm in intervening to assist victims in distress or to prevent victimization. Following rights have been granted to victims:

Access to justice and fair treatment

It is said that victims should be treated with compassion and dignity. They are entitled to justice and prompt remedy provided under national legislation. It is important to provide the information to the victims regarding their role, scope, timing, and progress of proceedings and disposition of their cases; while allowing the views and concerns of victims to be presented at appropriate stages when their personal interests are affected without prejudice to accused. It is also important to provide proper assistance to victims throughout the legal process take measures to minimize inconvenience to victims and more importantly protect their privacy and ensure their safety. Of course, avoiding unnecessary delay in the disposition of cases and execution of orders or decrees granting awards to victims.

Restitution

Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families, or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services, and the restoration of rights. Governments should review their practices, regulations, and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities, and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

Compensation

When compensation is not fully available from the offender or other sources, states should Endeavour to provide financial compensation to victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes. The family, in particular dependants of persons who have died or become physically or mentally

incapacitated as a result of such victimization. The establishment, strengthening, and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including those cases where the state of which the victim is a national is not in a position to compensate the victim for the harm.

The provisions of the Criminal Procedure Code concerning victim compensation occupy a prominent place in the progressive development of the law relating to victim compensation through the judicial approach. Keeping in view the whole scenario of compensatory justice jurisprudence, the ambit of the criminal justice system needs to be expanded keeping in view the overall change in the approaches, thinking, and circumstances.

The victim should not be forgotten while administering justice. The victim would remain forgotten in the criminal justice system if despite Legislature having gone so far as to enact specific provisions relating to victim compensation, Courts choose to ignore the provisions altogether and do not even apply their mind to the question of compensation. It follows that unless Section 357 is read to confer an obligation on Courts to apply their mind to the question of compensation, it would defeat the very object behind the introduction of the provision. Victims should fairly be compensated for the injury caused by the act of the offender. This would prove to be an effective means to attain the ends of justice.⁶⁸

⁶⁸ Mundrathi, Sammaiah, "Law on Compensation to Victims of Crime and Abuse of Power" Deep & Deep Publications Pvt. Ltd. , Delhi, 2002 – Vibhute, K.I., "Criminal Justice" Eastern Book Co. Lucknow, 2004 Siddique, Ahmed, "Criminology, Problems and Perspectives" Eastern Book Co. Lucknow, 2000

Chapter 4
Analyzing the Efficacy and
Limitations of Current
Compensation and
Restitution Programs for
Victims

CHAPTER 4

ANALYZING THE EFFICACY AND LIMITATIONS OF CURRENT COMPENSATION AND RESTITUTION PROGRAMS FOR VICTIMS

The Indian Constitution has several provisions which endorse the principle of victim compensation. The constellation of clauses dealing with Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) laid the foundation for a new social order in which justice, social and economic, would flower in the national life of the country (Article 38). Article 41, which has relevance to victimology in a wider perspective, mandates, inter alia, that the state shall make effective provision for –securing public assistance in cases of disablement and in other cases of undeserved want. Surely, crime victims and other victimized people swim into the haven of Article 41. Article 51-A makes it a fundamental duty of every citizen of India –to protect and improve the natural environment ... and to have compassion for living creatures and –to develop humanism. If empathetically interpreted and imaginatively expanded, we find here the constitutional beginnings of victimology. Further, the guarantee against unjustified deprivation of life and liberty (Article 21) has in it elements obligating the state to compensate victims of criminal violence.

Victimology was introduced at an early stage in India.–An article on compensation orders had already been published there in 1965, and a seminar on –Criminal Law and Change of Modern Society||, held in 1969, contained a session on compensation for crime victim. At the First International Symposium on Victimology which was held in Israel in the year 1973, an Indian participant made a presentation on compensation for victims.¹⁰⁰ It reflected the interest on victimology that existed at that time in India. In 1970's, –some studies on victimization were conducted in India, especially on victims of dacoity (gang robbery) (Singh 1978, 1985). In India, the early studies on victims were on –victims of dacoit gangs (i.e. gangs of armed robbers) in the Chambal valley (Singh, 1978); victims of homicide; and victims of motor vehicles accidents. Singh and Jatar (1980) studied whether compensation paid to victims of dacoits in Chambal Valley was satisfactory or not.||¹⁰² It was since 1980's that studies in the field of Victimology have been conducted by scholars in India and have been published.¹⁰³ For the first time in India, in the year 1984 the Department of Criminology of the University of Madras under the guidance of Prof. Kumaravelu Chockalingam organized –an exclusive three day seminar on Victimology was

organized involving researchers, academics and practitioners from the CJS⁶⁹⁷⁰.

In India, the Indian Society of Victimology (ISV) was established in 1992. The ISV was -founded to discuss the problems of victims, to disseminate knowledge and awareness of the plight of crime victims and to mobilize support for creating a new law for victims.||¹⁰⁵ Since then ISV has been carrying out national conferences on subjects of interest in the field of victimology. -The major contribution of the ISV to the advancement of victimology in India was the organization of a workshop to draft a Victim Assistance Bill.|| This Bill was drafted with the support of the National Law School of India University, Bangalore under the leadership of Professor N. R. Madhava Menon and the National Human Rights Commission (NHRC) under the Chairmanship of former justice of the Supreme Court of India, V.R. Krishna Iyer. The UN Commission on Crime Prevention and Criminal Justice, Vienna, supported this initiative of the ISV -by writing to the Home and law Ministries of the Government of India to encourage it to consider enacting a victim law, treating the draft bill on Victim Assistance prepared by the ISV as a model.||⁷¹⁷²⁷³⁷⁴

The Malimath Committee also felt that this draft bill of ISV -is an appropriate draft for initiating action.|| The State Government of Tamil Nadu in the year 1995 created a Victim Assistance Fund for the benefit of the crime victims within the state. The then Chief Minister of Tamil Nadu -announced in the Legislative Assembly in April 1995 the introduction of a new scheme to provide monetary assistance to certain categories of victim s of violent crime and allocated ten million rupees as a first step for the scheme (Government of Tamil Nadu, 1995; Government of Tamil Nadu, 1997).⁷⁵ The Charter for Women Victims of Crime and Violence, 2005 -provides a model for the Asian region. The State of Tripura formulated a Victim Compensation Rules in the year 2007.

At present in India, the States/UTs have enacted VCS, following the insertion of Section 357A to CrPC by way of an amendment in the year 2008.

Recently on October 14th, 2015, the MHA has introduced the CVCF Guidelines to enable

⁶⁹ Ibid.

⁷⁰ Chockalingam, supra note 516

⁷¹ Ibid

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Charter for Women Victims of Crime, Institute of Social Sciences, New Delhi, at the instance of the National Commission for Women of India, 13 January, 2005.¹¹⁰ Waller, supra note 266, at 18

upport to victims of various attacks.⁷⁶

Before we study the VCS of the States/ UTs, there is a need to discuss the recent development in the form of CVCF guidelines that came up with an aim to reduce disparity in quantum of compensation amount notified by different States for similar crimes.

CVCF GUIDELINES

The MHA on October 14th, 2015 did set up the CVCF. All State Governments and UTs were requested to modify their VCS suitably. On July 13th, 2016, the MHA through a letter to all the Chief Secretaries of all State Governments/ UT administrations informed that the CVCF guidelines have been modified to provide one time grant to State/UTs instead of releasing fund on time to time basis.⁷⁷ The scheme is now known as the CVCF Guidelines-2016 and it has come into force with effect from July 6th, 2016. The size of the CVCF will be Rs.200 crore. The one time budgetary grant of Rs. 200 crore for CVCF has been sanctioned out of the -Nirbhaya Fund|| which is meant for tackling crime/violence against women. The Joint Secretary (CS Division) MHA shall be designated as the Administrator of the Fund. The CVCF shall be administered by an Empowered Committee¹¹⁴ chaired by the Additional Secretary (CS), MHA.⁷⁸

Objective of setting up of the CVCF:-

- i. To support and supplement the existing VCS notified by States/UT Administrations.
- ii. To reduce disparity in quantum of compensation amount notified by different States/UTs for victims of similar crimes.
- iii. To encourage States/UTs to effectively implement the VCS notified by them under the provisions of section 357A of CrPC and continue financial support to victims of various crimes especially sexual offences including rape, acid attacks, crime against children,

⁷⁶ available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=128738>. The guidelines of 2015 under the heading of bank account and receipt of contributions from the public provided that the contributions from Corporates and Public shall be received through a single bank account opened in the State Bank Of India, Central Secretariat Branch, North Block, New Delhi, favouring -The Central Victim Compensation Fund (CVCF). The Bank Account will be operated jointly by the Administrator of this Corpus Fund and the Chief Controller of Accounts, Ministry of Home Affairs. The donations into the corpus fund could be received through online payments through net banking, or by debit/ credit cards or cheque or demand draft. In such cases, the donor shall receive an automated, digitalised signed receipt from the State Bank Of India, Central Secretariat Branch, North Block, New Delhi.

⁷⁷ A corpus fund called ‘Nirbhaya Fund’ has been set up by the government of India in 2013 for supporting initiatives set up by the Government and NGOs working towards protecting the dignity and ensuring safety of women in India.

⁷⁸ available at http://mha.nic.in/sites/upload_files/mha/files/CVCFGuidelines_140716.PDF.

human trafficking etc.

Requirements that the State/ UT have to fulfill in order to access funds from CVCF

- a) The State/UT must notify the VCS as per provisions of section 357A of CrPC.
- b) The quantum of compensation notified should not be less than the amount mentioned in the Annexure of the guidelines.

State /UT shall get one time grant from CVCF and the amount so received shall be utilized by State/UTs for disbursements under their respective VCS

- c) Any expenditure incurred from the State Victim Compensation Fund to assist the victims will be treated to be first spent from the non-budgetary resource available in the State Fund. Budgetary grant received from the Central Government/State Governments/UT Administration will be used only after consuming the non-budgetary resource.

Activities of CVCF

The activities of CVCF will be

- a) To obtain funds in MHA to supplement and support the VCS notified by the States/UT administrations,
- b) To provide special financial assistance up to Rs. 5 Lakhs to the victims of acid attack to meet treatment expenses over and above the compensation paid by the respective States/UTs.

Procedure regarding approval and release of funds from CVCF

- a. States/UTs will get one time grant from CVCF to support the victim compensation to the eligible victims following the procedure and timeframe provided in their respective schemes. The grant will be credited to Consolidated Fund of respective States/UTs.
- b. The State Governments/UT Administrations shall submit periodic reports regarding implementation of their respective VCS.
- c. The empowered Committee shall normally meet once in a year, or sooner, if required, to assess the functioning of State/ UT VCS
- d. UT Administrations shall route their reports through UT Division, MHA.
- e. The Empowered Committee shall have the power and the authority to seek further reports from the concerned States/ UTs.

The guideline 2016 says that there is no need for bank account and receipt of contributions from the public

Information relating to all activities of the CVCF

The information relating to all activities of the CVCF along with the relevant FAQs will be uploaded on the web site of the MHA and also by the State/UT Governments, in their respective web sites. The respective Ministry/State Governments will answer RTI or other queries related to the implementation and utilization of funds made available to them for the activities under this scheme. The CS division of the Union Home Ministry administratively concerned with the CVCF shall monitor the utilization of funds received by the State Governments/ UT Administrations and shall provide yearly Report to the Additional Secretary (CS).

Minimum amount of compensation for certain injuries and losses provided by the CVCF

Below in Table 3.3 is provided the minimum amount of compensation as laid down by the Guideline in its Annexure for certain injuries and losses.

Table 4.1: Minimum amount of compensation for certain injuries and losses as provided in the Guidelines

Sl. 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

However, it is also mentioned that if the victim is less than 14years of age, then the compensation shall be increased by 50% over the amount specified above.

Amount approved for the VCS of all States/UTs under the CVCF

Table 4.2

Amount approved for States/ UTs under the Guidelines

Sl.No	Name of States	Amount Allocated (in Lakh)
1.	Andhra Pradesh	662
2.	Arunachal Pradesh	33
3.	Assam	860
4.	Bihar	722
5.	Chattisgarh	685
6.	Goa	50
7.	Gujarat	390
8.	Haryana	550
9.	Himachal Pradesh	120
10.	Jammu & Kashmir	170
11.	Jharkhand	450
12.	Karnataka	995
13.	Kerala	760
14.	Madhya Pradesh	2180
15.	Maharashtra	1765
16.	Manipur	34
17.	Meghalaya	50
18.	Mizoram	48
19.	Nagaland	10
20.	Odisha	1060
21.	Punjab	410
22.	Rajasthan	1545
23.	Sikkim	23
24.	Tamil Nadu	565
25.	Telangana	590
26.	Tripura	115
27.	Uttar Pradesh	2810
28.	Uttarakhand	125
29.	West Bengal	1265
	Total States	19042
30.	Andaman & Nicobar Islands	15
31.	Chandigarh	23
32.	Dadra & Nager Haveli	10
33.	Daman & Diu	10
34.	Delhi UT	880
35.	Lakshadweep	10
36.	Puducherry	10
	Total UT(s)	958
	Total All India	20000

Table 4.2 shows the amount of money approved for the States/UTs under the Guidelines.

VCS OF STATES/UTs

The VCS of States/ UTs have laid down their own eligibility criteria for grant of compensation, procedure for grant of compensation, limitation period for filing claims for grant of compensation etc. These schemes also provided amount of compensation to be paid for particular kind of injury/ loss. These rates of compensation for various injuries or losses varied across the VCS of the States/ UTs. Concern had been raised time and again regarding such disparity. Many of the VCS¹¹⁶ reflect the direction given by the Supreme Court of India in the case of *Laxmi v. Union of India & Others*⁷⁹. In this case the Court directed that the acid attack victims shall be paid compensation of at least Rs. 3 Lakhs by the concerned State Government/ UT as the after care and rehabilitation cost. Of this amount, a sum of Rs.1 lakh shall be paid to such victim within 15 days of occurrence of such incident (or being brought to the notice of the State Government/UTs) to facilitate immediate medical attention & expenses in this regard. The balance sum of Rs. 2 Lakhs shall be paid as expeditiously as may be possible and positively within two months thereafter.⁸⁰

The Supreme Court of India in the case *Tekan Alias Tekram v. State of Madhya Pradesh (Now Chattisgarh)*⁸¹, observed that on perusal of the VCS of different States and the UTs, it is clear that no uniform practice is being followed in providing compensation to the

⁷⁹ Bihar, Chattisgarh, Haryana, Kerala, Meghalaya, Punjab, Uttar Pradesh, Madhya Pradesh, Telangana, Sikkim (The researcher could not find a copy of the amendment. However, the website of the government mentions quantum of compensation.), Tripura (The VCS scheme available in the website of the Tripura State Legal Services Authority does not provide the amendment to the Schedule. However, the amendment to the Schedule is available at <http://prisons.tripura.gov.in/sites/default/files/victim.pdf> , Kolkata (The researcher could not find a copy of the amendment to the Schedule post Laxmi's case. However, in the case of *Sabana Khatun v. The State of West Bengal*, W.P.No. 34704 (w) of 2013, the learned counsel for the State produced a written instruction, received from the Joint Secretary to the Government of West Bengal to the Government of West Bengal, Department of Home and submitted that the State Government never intended to disobey the Apex Court's order and further submitted that in this State already a scheme being the West Bengal Victim Compensation Scheme, 2012 is existing covering compensation for Acid Attacked victim and now in terms of the decision of the Hon'ble Apex Court in the case of *Laxmi vs Union of India & Ors.*(supra), the State Government is going to amend the existing scheme so far as the quantum of compensation for acid attacked victims are concerned. In this regard, he also handed over an order issued by the State Government of West Bengal, notified in Extraordinary Kolkata Gazette on November 30, 2013. It is contended according to the Sub-Section (2) of Section 357A CrPC., a victim is entitled to compensation only when her case is recommended by a Court of Compensation or Legal Services Authority and not by approaching the State Government straight way and only entitled to that much of compensation as has been prescribed in the schedule of the scheme and here in this case, the victim not being referred either by a Court of Compensation or by the Legal Services Authority her claim cannot be sustained. He heavily insisted that no order be passed for payment of compensation to the writ petitioner till the existing scheme that is the West Bengal Victim Compensation Scheme, 2012 is suitably amended in terms of the order of the Hon'ble Supreme Court.

⁸⁰ Writ Pettition (CRL.) NO. 129 of 2006

⁸¹ Crim. Appeal No 884 of 2015.

rape victim for the offence and for her rehabilitation. It also observed that the States and UTs should consider and formulate a uniform scheme specifically for the rape victims in the light of the scheme framed in the State of Goa which has decided to give compensation up to Rs 10,00,000/-.

Post the coming of the CVCF guidelines in 2015, many States⁸² amended their existing quantum of compensation and provided compensation as per the guidelines.⁸³

In the 14th All India Meet of the State Legal Services Authorities held on April, 2016 at Hyderabad, Telangana, concern was raised about the huge difference in the rates of compensation fixed by the VCS of different States for various injuries.

The Supreme Court of India on May 26th, 2016 issued notice to all States and UTs in an application filed by Senior Advocate Indira Jaising seeking information about compensation given to rape victims. Jaising argued that there is neither uniformity in the fixation of compensation among States nor a settled mechanism for uniform disbursement of money.⁸⁴ She even highlighted the fact that –in some States, the compensation was a paltry `50,000 in some others it was `10 lakh. There is also no certainty that compensation would be awarded. In one recent case, the apex court had to direct the West Bengal government to pay `5 lakh to a Dalit woman who was gang-raped.¹ An interesting remark was made by the Bench when Justice Chandrachud said that a national model ‘covering the issue’ was desirable so that it is not left to each state to formulate its own Scheme under Section 357A.⁸⁵ The Supreme Court asked the Centre to frame a uniform national policy to financially compensate the rape victims, while terming the Nirbhaya Fund merely a lip service. Justice P.C.Pant said that there was too much dichotomy and contradiction among States regarding compensation schemes for rape survivors. The Bench issued notice to the Centre, States and UTs on the question of effective implementation of section 357A of CrPC. The Bench observed orally that setting up of Nirbhaya Fund is not enough. The Union Of India must ensure that adequate relief is being provided to the victims of sexual offences.⁸⁶

The Central Government through the CVCF Guidelines, 2016, has asked the States/ UTs to provide compensation as laid by the guidelines in its Annexure. However, many of

⁸² Assam, Gujarat, Chandigarh.

⁸³ available at <http://barandbench.com/supreme-court-seeks-replies-States-steps-taken-formulate-victim-compensation-schemes>.

⁸⁴ available at <http://www.newindianexpress.com/opinions/editorials/2016/may/28/Justice-biggest-compensation-for-a-rape-victim-908720.html>.

⁸⁵ available at <http://barandbench.com/supreme-court-seeks-replies-States-steps-taken-formulate-victim-compensation-schemes>.

⁸⁶ available at <http://www.thehindu.com/news/national/frame-national-policy-for-relief-to-rape-victims-supreme-court/article8651996.ece>.

VCS provide compensation higher than what is laid down in the Annexure of the guidelines, 2016.

Below is discussed the key provisions of the VCS (that came up post insertion of section 357A in CrPC) of the States and UTs⁸⁷. In the light of the above mentioned developments, the study regarding the various VCS will focus on the key provisions like setting up of victim compensation fund, eligibility criteria for grant of compensation, procedure for grant of compensation, limitation period and any other unique features of the scheme.

ANDHRA PRADESH

Name of the Scheme

The Andhra Pradesh Victim Compensation Scheme, 2015⁸⁸

Definition of key terms

According to the scheme, the term victim means as defined under section 2 (wa) of CrPC, including victim who is sexually exploited for commercial purposes, trafficking, sufferer of acid attack and also a dependent who is leading life on the income of the victim and who requires rehabilitation.

The term dependent is defined under the scheme to mean wife/husband, father, mother, unmarried daughter, minor children and includes other legal heir of the victim who, on providing sufficient proof, is found fully dependent on the victim by the DLSA

According to the scheme, family means parents, children and includes all blood relations living in the same household.

Victim Compensation Fund

The scheme provides for constituting a victim compensation fund by the State Government. Every year the state government shall allot a separate budget/grant for the scheme. This should be equivalent to the expenses incurred previous year or basing on the probable expenditure requested by the SLSA. Apart from it the fund shall be credited by:

- i. budgetary allocation made by the Government;
- ii. all grants, subventions, donations and gifts made by the Central Government, State Government, any local authority or anybody whether incorporated or not or any person;

⁸⁷ The researcher could not study the victim compensation scheme of the Andaman and Nicobar Islands as the scheme was not available at the website of Andaman and Nicobar Islands State Legal Services Authority.

⁸⁸ available at <http://www.apgovernmentorders.com/go/view/32/RT/15042015/MW/EDM/Others>.

- iii. receipts of amount of fines imposed under section 357 of CrPC and ordered to be deposited by the courts in the fund;
- iv. amount of compensation recovered from the wrongdoer/accused under clause 13⁸⁹ of the scheme.
- v. donations/contributions from international/national/Philanthropist/ Charitable institution/Organization and individuals.
- vi. all other sums received by or on behalf of the victims compensation from any source whatsoever.⁹⁰

Emergency Fund

The scheme has a provision for the constitution of an Emergency Fund by the State Government by allocating from the Victim Compensation Fund such amount as it thinks proper. The Emergency Fund shall be operated by the concerned Commissioner of Police/District Superintendent of Police/ Superintendent of Railway Police for providing quick and immediate Medical Assistance to the victim of serious injuries. The fund shall be released on the report of the concerned Station House Officer.

Eligibility criteria for the victim or his dependent for receiving compensation

1. Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, such victim may apply for grant of compensation under sub section (4) of section 357A of CrPC;
2. The victim/claimant reports the crime to the officer-in-charge of the police station or any senior police officer or Executive or Judicial Magistrate of the area within 48 hours of the occurrence.
3. The offender is traced or identified, and where trial has taken place, the victim/claimant has co-operated with the police during the investigation and trial of the case;
4. The victim/claimant shall co-operate with the police and prosecution during the investigation and trial of the case;
5. The income of the family should not exceed Rs.4.5 lakh per annum.
6. The crime on account of which the compensation to be paid under this scheme should have been occurred within the Jurisdiction of the State of Andhra Pradesh.

⁸⁹ Clause 13 lays provision for recovery of compensation in case of fraud

⁹⁰ available at <http://www.apgovernmentorders.com/go/view/32/RT/15042015/MW/EDM/Others>

Procedure for granting compensation

- (1) Whenever a recommendation is made by the Court or on an application by any victim or his dependent under sub section (2) of section 357A of CrPC to the DLSA, the said Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to the victim arising out of the reported criminal activity and the DLSA may call for any other relevant information necessary in order to determine genuineness of the claims. After verifying the claim and on enquiry, shall award compensation within two months, in accordance with the provisions of the scheme.
- (2) While granting compensation under this scheme an undertaking shall be obtained from the victim/ claimant to the extent that in case of granting subsequent compensation by the Court under section 357 (3) of CrPC or under any other law, the victim/claimant to remit the excess amount received as compensation under Sec. 357A of CrPC.
- (3) The DLSA shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including incidental charges such as funeral expenses etc. The compensation may vary from case to case depending on facts of each case.
- (4) The quantum of compensation to be awarded under the scheme to the victim or his dependents shall not exceed the maximum limit as per the schedule appended to this scheme and shall be disbursed to the victim or his dependents, as the case may be, from the VCF by the DLSA in case of concerned Revenue District through a cheque with a copy to the Member Secretary, Andhra Pradesh SLSA with a copy to the Jurisdictional Court with Crime Number, Name of the Police Station, Calendar Case/Preliminary Register Case/Sessions Case Number.
- (5) Compensation received by the victim from the State/Insurance company or any other institution in relation to the crime in question, namely, insurance, ex-gratia and/or payment received under any other Act/G.O/or State-run Scheme including the compensation awarded by the State/National Human Rights Commissions or any Court/Commission shall be considered as part of the compensation amount under this scheme and if the eligible compensation amount is more than the payments received by the victim from collateral sources mentioned above, the balance amount shall be paid out of the Fund. In case of SCs & STs, the amount of compensation under this scheme is besides the compensation/benefits available to them under other Government schemes/orders.
- (6) In fixing the quantum of compensation, regard must be had to the Minimum Wages

Act, Fatal Accidents Act and the schedule to the Motor Vehicle Act, 1988.

- (7) The cases covered under the Motor Vehicle Act, 1988 (Central Act No 59 of 1988) wherein compensation is to be awarded by the Motor Accident claims Tribunal, shall not be covered under the scheme.
- (8) The State/DLSA, to alleviate the suffering of the victim, may order for immediate first aid facility or medical benefits to be made available, free of cost, on the certificate of the police officer not below the rank of the Officer- in-charge of the police station or Magistrate of the area concerned, or any other interim relief as it may deem fit.
- (9) The State/DLSA shall take into consideration of the series of surgeries undergone/to be undergone by the victim of acid attack and shall award the actual medical expenditure incurred/to be incurred.
- (10) The State / DLSA shall take into consideration of the interim compensation of the Emergency Fund that was awarded to the victim while passing the final award.
- (11) The State/ DLSA shall not allow any participation or representation by a legal practitioner or any other person or Institution or Non-Governmental Organization on behalf of the Victim/Claimant.
- (12) The State/ DLSA shall take into consideration the trauma undergone by a victim of commercial sexual exploitation, trafficking (VOCSET) and the victim of the Acid attacks and the trauma undergone by a bonded labour /child labour in awarding compensation. The Authority shall take into consideration the aspects of rehabilitation, reintegration and restoration of the VOCSE⁹¹

Interim relief to victims of acid attack

The scheme provides that the victims of acid attack shall be awarded relief by the State or the DLSA under sub-section (6) of section 357A of CrPC as the after case rehabilitation cost on the certificate of the officer in charge of the Police Station or the Magistrate of the area concerned.

Limitation period for filing a claim of compensation

The scheme sets a limitation period of twelve months from the occurrence of the

⁹¹ Available at http://arunachalpradesh.gov.in/csp_ap_portal/pdf/Documents/ap-victim-compensation- scheme-2011.pdf(Last visited on July 15, 2019).

crime after which no claim made by the victim or his dependents shall be entertained. However, if the DLSA is satisfied for reasons to be recorded in writing, may condone such delay in making the claim.

Recovery of compensation awarded

The scheme provides for the recovery of compensation granted to the victim or his dependent from the person responsible for causing such loss or injury. Such recovery can be made by the DLSA represented by its Secretary by instituting proceedings before the competent court of law.

Recovery of compensation in case of fraud

The scheme provides that if a victim or his dependent obtains an order of compensation basing on false/ vexatious/ fabricated complaint, the compensation so paid shall be recovered with an interest of 12% per annum. The District Collector shall implement such order/ award as arrears of land revenue and the same be credited to the victim compensation fund of the respective DLSA.

ARUNACHAL PRADESH

Name of the Scheme

The Arunachal Pradesh Victim Compensation Scheme, 2011.

Definition of key terms

The term victim is defined as any person who himself or herself suffered loss or injury as a result of crime and requires rehabilitation.

The term dependent is defined to mean and includes those who at the time of the deceased's death was either the spouse or a natural parent or a child of the deceased.

Victim Compensation Fund

The scheme provides for the constitution of a victim compensation fund.

The State Government shall from time to time provide funds/grants/allocations.

Eligibility criteria for the victim or his dependent for receiving compensation

1. He/She should not have been in receipt of any compensation for such loss or injury from any Government authorities or any other scheme of the Central/State Government, for which the applicant or his dependents shall file a declaration to that effect along with the application form as set out in the Annexure –II of the Scheme.

2. The loss or injury sustained by the victim or his dependents should have caused substantial loss to the income of the family making it difficult to make both ends to meet without the financial aid or which requires such expenditure beyond his means on medical treatment of such mental/physical injury to the victim.
3. Where the offender of the crime is untraceable or cannot be identified, but the victim is identifiable, the victim or his dependents may also apply for grant of compensation under sub-section (4) of section 357A of the CrPC, 1973.
4. Where the trial court at the conclusion of the trial is satisfied that the compensation awarded under section 357 of the CrPC is not adequate for rehabilitation, or where the case end in acquittal or discharge and the victim is to be rehabilitated and has therefore recommended a higher compensation.

Procedure for granting compensation

1. Under the scheme, the victim or his dependents shall, as soon as an FIR is filed, apply for compensation in the specified format as at the area Superintendent of Police or the Judicial Magistrate along with the supporting documents, who shall on receipt of such application forward the same to the DLSA certifying the eligibility of such claims.
2. On such application being made by any victim or his dependents under sub-section (4) of section 357 A of the CrPC, 1973 to the DLSA, it shall examine the case and get verified the contents of the claim with regard to the assessment of such loss or injury caused to the claimant by a competent medical Board constituted for the purpose and it may also call for any other relevant as deemed necessary for consideration of the claim from the concerned authority. Thereafter, the DLSA will submit its recommendations for compensation to the SLSA.
3. The Medical Board as referred in para (ii) above shall be constituted by the District Medical Officer on the requisition of DLSA and shall at least consist of not less than two medical officers possessing special knowledge in the subject.
4. The application so received by the DLSA will be duly examined and forwarded to the SLSA with its recommendations a period of 30 (Thirty) days or which may be liable to be extended in case of extreme necessity.
5. The DLSA may in urgent and extreme necessity in order to alleviate the suffering of the victim, order for immediate first aid facility or medical benefit not below the rank of Superintendent of Police or such interim relief whether in cash or kind as it deem fit from its

own resources which shall be deducted from the final amount of compensation to be awarded by the SLSA.

6. The amount of compensation shall be decided by the SLSA based on standard criteria given in the Schedule-I within a period of 30 (Thirty) days or which may be liable to be extended in case of extreme necessity.⁹²
7. Enhanced compensation if required on the recommendations of the trial courts may be awarded at the end of the trial for which the SLSA may initiate actions accordingly.

Recovery of compensation awarded

The SLSA, if deemed fit, may on receipt of the order the trial court, if any as to the enhancement of the compensation of the victim or his dependent should be paid by the perpetrator of crime may in case, compensation is not instantly paid institute proceedings before a competent court of law in consultation with the office of the concerned public prosecutor for recovery of compensation granted to the victim or his dependents. The amount so recovered shall be deposited in the Victim Compensation fund and thereafter be paid to the victim or his dependents, as the case may be.

Limitation period for filing a claim of compensation

The scheme also lays down a limitation period of one year from the occurrence of the crime for victim or his dependents to file a claim for compensation. Provided that the DLSA may if satisfied, for reasons to be recorded in writing, condone the delay in filing the claim.

UTTAR PRADESH

Name of the Scheme

The Uttar Pradesh Victim Compensation Scheme, 2014.⁹³

Definition of key terms

According to the scheme, victim means a person who himself has suffered loss or injury as a result of the crime and requires rehabilitation, and includes his dependent family members.

⁹² Application Form for assistance to the victim or the dependents of the victims of the crimes under section 357A of CrPC.

⁹³ available at <http://upslsa.up.nic.in/VCS.pdf>(Last visited on June 22, 2019).

Victim Compensation Fund

The scheme provides for the establishment of victim compensation fund. The State Government shall allot a separate budget for the purpose of the scheme every year.

Eligibility criteria for victim or his dependent for receiving compensation

- a) the offender is not traced or identified, but the victim is identified and where no trial takes place; such victim may also apply for grant of compensation under sub section (4) of section 357A of CrPC;
- b) the victim/claimant reports the crime to the officer-in-charge of the police station within 48 hours of the occurrence or any senior police officer or Executive Magistrate or Judicial Magistrate of the area provided that the DLSA, if satisfied for the reasons to be recorded in writing, may condone the delay in reporting;
- c) the victim/claimant cooperates with the police and the prosecution during the investigation and trial of the case.

Procedure for granting compensation

1. Whenever a recommendation is made by the Court or an application is made by any victim or his dependent under sub section (2) of section 357A of CrPC to the DLSA, the said Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to the victim and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness of the claim. After verifying the claim, the DLSA shall, after due enquiry, award compensation within two months from the date of receipt of the recommendation of the court of the receipt of application under sub-section(4) of section 357A of CrPC in accordance with the provisions of this scheme.
2. Compensation under this scheme shall be paid subject to the condition. that if the trial court, while passing judgment at later date, orders the accused persons to pay any amount by way of compensation under sub- section (3) of section 357 of CrPC, the victim/claimant shall remit an amount ordered equal to the amount of compensation or the amount ordered to be paid under the said sub-section (3) whichever is less. An undertaking to this effect shall be given by the victim/ claimant before the distribution of the compensation amount.
3. The DLSA shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on

treatment, sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to cases depending on the facts of each case.

4. Keeping in view the particular vulnerabilities and special needs of the affected person in certain cases, the DLSA or the SLSA, as the case may be, will have the power to provide additional assistance of Rs, 25,000/- subject to maximum of Rs. 1,00,000/-, in the cases where:
 - i. The affected person is a minor girl requiring specialized treatment and care;
 - ii. The person is mentally challenged requiring specialized treatment and care;
 - iii. Any other case as may be deemed fit by the Legal Services Authority concerned.
5. The amount of compensation decided under the scheme shall be disbursed to the victim or his dependents, as the case may be, from the fund. The interim or final financial assistance, as the case may be, shall be remitted to the bank account of the applicant preferably within a week. In cases where the person affected is a minor, the amount shall be remitted to the bank account of his parent or guardian after the Authority concerned is satisfied about the proper utilization of the amount of compensation.
6. Compensation received by the victim from the State in relation to the crime in question, namely, insurance, ex gratia and/or payment received under any other Act or State-run Scheme, shall be considered as part of the compensation amount under this scheme and if the due compensation amount exceeds the payments received by the victim from collateral sources mentioned above, the balance amount shall be paid out of the fund.
7. The cases covered under the Motor Vehicles Act, 1983 wherein compensation is to be awarded by the Motor Accident Claims Tribunal, shall not be covered under this scheme.
8. The DLSA, to alleviate the suffering of the victim, may order for immediate facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer-in-charge of the police station or the Magistrate of the area concerned. The DLSA may order for any other interim relief as it may deem fit.

Determination of assistance

The scheme says that while determining the compensation and rehabilitation services to be provided on the basis of the restorative needs of the affected person, the Authority shall be guided by the following factors:-

- a) Type and severity of the bodily injury suffered by the affected person and expenditure incurred or likely to be incurred on victim's medical treatment and psychological counseling.
- b) Age and financial condition of the affected person so as to determine the need for his education or professional or vocational training, as the case may be.
- c) Non-pecuniary loss entailing suffering, mental or emotional trauma or humiliation faced.
- d) Expenses incurred in connection with provision of any alternate accommodation in cases where the affected person resides in a place other than where the offence was committed and the FIR has been recorded and/or criminal trial initiated.

Limitation period for filing a claim of compensation

The scheme lays down a limitation period of six months after which no claim made by the victim or his dependents under sub-section (4) of section 357A of CrPC shall be entertained. However, the DLSA, if satisfied for the reasons to be recorded in writing, may condone the delay in filing the claim.

UTTARAKHAND

Name of the Scheme

The Uttarakhand Victim from Crime Assistance Scheme, 2013⁹⁴.

Definition of key terms

The term victim means a person, who himself has suffered loss or injury as a result of crime, acid attack, human trafficking, serious accident etc. and require rehabilitation and includes dependent family members.

Victim Compensation Fund

The scheme provides for the establishment of a victim from crime assistance fund. A separate assistance amount for this scheme shall be allotted by the State Government. Other than this, assistance in the form of donation, gift and grant in aid received from government

⁹⁴ available at <http://mha1.nic.in/par2013/AnnexLSQNo203For220714.PDF> (Last visited on August 8, 2019).

or non-government sources shall be accepted.

Eligibility criteria for the victim or his dependent for receiving compensation

- a) the offender is not traced or identified, but the victim is identified, and where no trial takes place, such victim may also apply grant of compensation under sub section (4) of section 357A of CrPC;
- b) the victim/claimant report the crime to the Magistrate in charge or Judicial Magistrate of the area. Provided that the DLSA, if satisfied, for the reasons to be recorded in writing, may condone the delay in reporting;
- c) the victim/claimant cooperate with the police and prosecution during the investigation and trial of the case.

Procedure for granting compensation

- 1 Whenever a recommendation is made by the Court or an application is made by any victim or his dependent under sub-section (2) of section 357A of CrPC to the DLSA, the said Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to victim and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness. After verifying the claim the DLSA after due enquiry shall decide the amount of assistance within two months, in accordance with provisions of this scheme.
- 2 Assistance under this Scheme shall be paid subject to the condition that if the trial court while passing judgment at later date, orders the accused persons to pay any amount by way of assistance under sub-section (3) of section 357 of CrPC, the victim/claimant shall remit an amount ordered equal to the amount of assistance, or the amount ordered to be paid under the said sub-section (3) of section 357 of CrPC, whichever is less. An undertaking to this effect shall be given by the victim/claimant before the disbursal of the assistance amount.
- 3 The DLSA shall decide the quantum of assistance to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on medical treatment, minimum sustenance amount required for rehabilitation including such incidental charges as 'funeral expenses etc. The assistance may vary from case to case depending on fact of each case.
- 4 The quantum of assistance to be awarded to the scheme shall be disbursed to the victim or his dependents, as the case may be, from the fund.

- 5 Assistance received by the victim from the State in relation to the crime in question, namely insurance, ex-gratia and/or payment received under any other Act Or State-run scheme, shall be considered as part of the assistance amount under these rule and if the eligible assistance amount exceeds or is equivalent to the payments received by the victim from collateral sources mentioned above, then no assistance amount shall be acceptable by this scheme.
- 6 The cases covered under Motor Vehicle Act, 1988 wherein assistance is to be awarded by the Motor Accident Claims Tribunal, shall not be covered under the scheme.
- 7 The DLSA, to alleviate the suffering of the victim, may order for immediate first aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer-in-charge of the police station or Magistrate of the area concerned, or any other interim relief as it may deem fit.

Limitation period for filing a claim of compensation

The scheme lays down a limitation period of six months after which no claim made by the victim or his dependents under sub-section (4) of section 357A of CrPC to the DLSA shall be entertained. Provided that the State or DLSA, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the claim.

Chapter 5
Assessing the Implications of Findings
and Making Recommendations for a
More Victim-Centered Approach

CHAPTER 5

ASSESSING THE IMPLICATIONS OF FINDINGS AND MAKING RECOMMENDATIONS FOR A MORE VICTIM- CENTERED APPROACH

Even though the criminal justice delivery system of India which is adversarial in nature has crafted a minimum role for the victims, concerns regarding victims of crime have been raised time and again by the judiciary, various commissions and committees. Judicial activism has helped in developing compensatory jurisprudence regarding victims of crime.

Legislative provision under section 357 of CrPC enabled the Court imposing a sentence in a criminal proceeding to grant compensation to the victim and order the payment of costs of the prosecution. But this is on the discretion of the sentencing court and is to be paid out of the fine recovered.

The Criminal Law Amendment, 2008 brought a change to the conditions of the victims by recognizing and giving them rights. This Amendment reflected the UN Declaration, 1985. The Malimath Committee Report of 2003 contributed towards the adoption of this amendment. The Amendment defined for the first time the term victim under section 2 (wa) of CrPC. Victim means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heir. This definition falls short of the standard laid down in the UN Declaration, 1985. This definition of victim is silent regarding situation where the perpetrator is not identified, apprehended, prosecuted or convicted. It fails to take notice of persons who suffer while trying to assist victim in distress or to prevent victimization. The Amendment also introduced section 357A in CrPC under which the State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who, require rehabilitation.

The Criminal Law Amendment Act, 2013 has further advanced the status of the victims of crime. Special mention of newly introduced section 357C in CrPC which provides that all hospitals, public or private, whether run by the Central Government, the State

Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims. Providing support services to victims is essential. However, India lags behind regarding support services unlike the other countries in the world. India does not have a comprehensive program regarding victim support services as contemplated under the Handbook, 1999. However, subsection (6) of section 357A mentions that in order to alleviate the suffering of the victim, the State or DLSA may order for immediate first-aid facility or medical benefits. Section 357C of CrPC lays down provision for providing treatment to victims.

VICTIM COMPENSATION SCHEME AND ITS IMPLEMENTATION

The concept of Justice in the Criminal Justice System is no longer confined to accused alone; it is true for all the victims of a crime. I am delighted to place in your hand the compendium of articles, circular orders, and case laws on Victim Compensation. VICTIMS are unfortunately the forgotten people in criminal justice delivery system. The Criminal Justice System tends to think more of rights of offender than that of relief to victims. Justice remains incomplete without adequate compensation to victim. Justice can be completed only when victim is compensated. The amendment in Code Of Criminal Procedure (1973) whereby section 357(A-C) of CrPc was added providing for the victim compensation scheme and it came into effect from 31.12.2009, have cast a responsibility on Court and Legal Services Authority to ensure grant of compensation to the victim, pursuant there to almost all the states have formulated their Victim Compensation Scheme.

The proponents of the justice argue that punishment is society's customary response to crime; it neither meets the need of victim nor prevents re-offending. Restorative justice aims at encouraging offenders to take responsibility for the consequences of their actions, express repentance and repair the harm they have done. Restorative justice also emphasizes the reintegration of offenders into communities rather than their control through strategies of punishment and exclusion. Restorative justice is an evolving response to crimes that respect the dignity and equality of each person, builds understanding, and promotes social harmony. This process provides an opportunity for victims to obtain reparation, feel safer and seek closure, allow offenders to gain insight into the cause and effects of their behaviour and take responsibility in a meaningful way, and enable communities to understand the underlying causes of crime. What required is a paradigm shift from punitive justice, to restorative justice,

which will meet to the need for restitution or reparation of harm to the victims and prevail over demand for punishment.

Table 5.1

NATIONAL LEGAL SERVICES AUTHORITY

Statistical information under the VICTIM Compensation Schemes April 2018 to March 2019

S. No	State Legal Service Authority	Applications received directly by Legal Service Institutions	Applications/orders marked/directed by any Court.	Applications Decided	Applications Pending	Compensation Awarded in (Rs.)
1	Andaman & Nicobar Islands	0	0	0	0	0
2	Andhra Pradesh	95	33	46	75	12374136
3	Arunachal Pradesh	47	2	38	2	7820000
4	Assam	139	423	371	547	44770402
5	Bihar	578	243	470	18	93785000
6	Chhattisgarh	384	436	587	446	38498000
7	Dadra & Nagar Haveli	0	6	4	1	650000
8	Daman & Diu	0	0	0	0	0
9	Delhi	916	1698	2284	1372	521929000
10	Goa	0	4	0	4	0
11	Gujarat	230	189	394	181	73409000
12	Haryana	98	334	396	115	77911000
13	Himachal Pradesh	36	51	33	0	1840000
14	Jammu & Kashmir	26	8	19	0	5325000
15	Jharkhand	292	499	373	981	59395000

S. No	State Legal Service Authority	Applications received directly by Legal Service Institutions	Applications /orders marked/ directed by any Court.	Applications Decided	Applications Pending	Compensation Awarded in (Rs.)
16	Karnataka	1696	559	866	1462	107707275
17	Kerala	114	356	150	221	30610000
18	Lakshadweep	0	0	0	0	0
19	Madhya Pradesh	650	484	590	446	54420000
20	Maharashtra	114	43	104	211	7770000
21	Manipur	0	260		38	0
22	Meghalaya	80	24	31	6	2345000
23	Mizoram	231	56	88	51	25072000
24	Nagaland	11	0	0	12	0
25	Odisha	1024	275	783	1419	100079187
26	Puducherry	1	2	1	0	300000
27	Punjab	337	61	138	236	16552350
28	Rajasthan	1295	777	2170	674	276523750
29	Sikkim	0	0	00	0	0
30	Tamil Nadu	757	118	425	947	57661540
31	Telangana	20	10	13	26	0
32	Tripura	31	22	69	28	10820000
33	U. T. Chandigarh	7	12	10	10	8200000
34	Uttar Pradesh	26	0	26	0	3625000
35	Uttarakhand	42	54	76	36	16280300
36	West Bengal	136	136	198	24	28719806
	Total	9412	6941	1073	9589	1684392746

Source : Website National Legal Service Authority. The statistics shows that:-

- Only fraction of applications are filed by victims which exhibits lack of awareness of VCS among the people.
- Rajasthan, Karnataka, Delhi, Odisha has contributed on efforts to make VCS implemented.
- Big number of applications are pending before court or legal service authorities which highlights delay of procedure.
- A substantial number of victims elect not to report their victimizations to the police. Thus they do not choose to prosecute and this is the reason they don't apply for compensation too.

MALADIES OF EXISTING VICTIM COMPENSATION SCHEME

The present criminal justice system is based on the assumption that the claims of a victim of crime are sufficiently satisfied by the conviction of the perpetrator.⁹⁵ The Committee on Reforms of Criminal Justice System, chaired by Justice Dr. V.S. Malimath, by the Ministry of Home Affairs, in its Report submitted to the Government of India in March 2003, perceived that –justice to victims is one of the fundamental imperatives of criminal law in India.⁹⁶ It suggests a holistic justice system for the victims by allowing, among other things, participation in criminal proceedings as also compensation for any loss or injury.⁹⁷

In India, there are five possible statutory provisions under which compensation may be awarded to victims of crime, namely:

- Fatal Accidents Act, 1855
- Motor Vehicles Act, 1988
- Criminal Procedure Code, 1973
- Probation of Offenders Act, 1958; and
- Constitutional remedies for human rights' violations

Until 2009, there was no comprehensive legislation or a well-designed statutory scheme in India that allowed a victim to seek compensation from either the perpetrator or the State. The recent amendment to the CrPC notified in 2009, addressed the victim's right to compensation. It is a step forward; however, some inherent flaws remain.

The present victim compensation scheme in India is facing some challenges, which it must overcome in order to survive by earning the faith of the people for which it exists. The common man has no idea of the inherent lacunas in

⁹⁵ N.R. Madhava Menon, *Victim's Rights and Criminal Justice Reforms*, THE HINDU, Mar. 27, 2006, at 7, available at <http://www.hindu.com/2006/03/27/stories/2006032703131000.htm>.

⁹⁶ Gaur, *supra* note 4, at 351

⁹⁷ Report of Committee on Reforms of Criminal Justice System, Ministry of Home Affairs, Government of India (2003) at 280-281.

it and he is surprised when he finds that he does not get the relief or remedy, which he may have justly expected and ultimately he loses faith in the system. The system is thus alienated from the people for whom it was introduced and nourished through ages. Some facts and circumstances may be stated in the form of contributory factors that constitute the challenge to the system.

Lack of Coordination and System Approach

There is generally a lack of understanding and lack of coordination among various components of criminal justice system that is police, prosecution, judiciary and the correctional organizations. The legislature makes the law, the police is to set the law in motion, to investigate the case and to produce the result of the investigation before the court through the prosecutor, the executive has to guide and supervise the action of the police, the court is to examine the material produced before it in the light of the laws, to find out whether the accused is guilty or innocent and if an accused is found guilty, to sentence him according to law, in some cases it has to send the accused to prison where he will be lodged and which is now supposed to be a correctional institution.⁹⁸

The work of these limbs of criminal justice system form a chain and the role played by each of these is important in its own sphere and also so far as the overall effect is concerned. In case of failure of any of them to discharge its functions effectively, or honestly, the whole system suffers. The degree of coordination between the police, prosecution, judiciary and the correctional sub- systems continues to be inhibited by institutional prejudices and bureaucratic in- capabilities. But one thing must be borne in mind that the judicial component has an onerous responsibility to prevent abuse of state power through police. It demands the highest degree of independence and integrity which should in no way be diluted in the name of coordination.

There is also a lack of coordination between police and prosecution. Police may help victims at earliest stage at help desk. Victims who are unaware from VCS, may get knowledge of procedure of compensation from police station.

⁹⁸ Law Commission of India, one hundred and fifty fourth report on the code of criminal procedure, 1973 (1996), at 57.

Delayed Disposal of Cases

It is in the interests of the citizens as well as the state that the disputes which go to the law courts for adjudication should be decided within a reasonable time, so as to give certainty and definiteness to rights and obligations. If the course of a trial is inordinately long, the chances of miscarriage of justice are more and expenses of litigation increases alike.

As far back as 1978, the Law Commission of India, headed by Justice H.R. Khanna observed as follows:

-The problem of delay in disposal of cases pending in law courts is not a recent phenomenon. It has been with us since a long time of late it has assumed gigantic proportions. This has subjected our judicial system, as it must to severe strain. It has also shaken in some measure the confidence of the people in the capacity of the courts to redress their grievances and to grant adequate and timely relief.⁷

The services of summons, notices and other documents issued by the courts, presupposes the promptness and efficiency of the serving establishment. Delay in these, causes delay in disposal of cases. It is needless to point out that inordinate delay in different stages makes the justice dearer to common people.⁹⁹ We can classify them as, at stage of registration, during investigation, and at the stage of trial and other allied things. The absence of counsel, unnecessary adjournments, absence of witnesses, the absence of prosecutor, failure to examine witnesses though present in the court, absence of day to day hearing and delay in delivery of judgments are all causes which lead to delay in criminal cases. Thus for victims, provision of interim compensation is the other way of justice.

Report of the Arrears Committee, 1989-1990, submitted by Dr. Justice V.S. Malimath stated that the following factors contribute to accumulation of arrears, viz :

- (1) Litigation explosion.
- (2) Increase in legislative activity.
- (3) Inadequacy of Judge strength.
- (4) Delays in filling up vacancies in High Courts & Subordinate Courts.
- (5) Unsatisfactory appointment of Judges.
- (6) Inadequacy of accommodation .

⁹⁹ See generally Frank Carrington & George Nicholson, *The Victims Movement: An Idea Whose Time Has Come*, 11 PEPP. L. REV. 1 (1983).

- (7) Lack of punctuality amongst Judges.
- (8) Long arguments.
- (9) Lack of priority for disposal of old cases.

Thus one of the greatest challenges that stares us in the face as we approach the 21st century, is the failure of judiciary to deliver justice expeditiously, which has brought about a frustration amongst the litigants.

SPEEDY JUSTICE AND VICTIMS RIGHTS

Speedy justice has always been the sine qua non of criminal jurisprudence. It was the Virginia Declaration of Rights of 1776, which incorporated into it the concept of speedy trial for the first time. It is worth mentioning in this connection that there is a Federal Act of 1974 in U.S.A., which is called Speedy Trial Act. The right to speedy trial is also recognized as a common law right, flowing from Magna Carta. Under Article 14 of the International Convention on Civil and Political Rights 1966, the right to a speedy trial is provided. Similarly, Article 3 of the European Convention of Human Rights and the 6th Amendment to the U.S. Constitution, refer to it as a basic right.¹⁰⁰

So far as India is concerned, the right to speedy trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the constitution of India. Supreme Court in *A. R. Antulay v. R.S. Nayaku*¹⁴ case held that right to speedy trial is implicit in Article 21 of the constitution and this constituted a fundamental right of every person accused of a crime. In

Hussainara Khatoon v. Home Secretary,

State of Bihar, the Supreme Court observed

“Now obviously procedure prescribed by law for depriving a person of his liberty can not be “reasonable, fair, or just” unless that procedure ensures a speedy trial for determination of guilt of such person. No procedure which does not ensure a reasonably quick trial, can be regarded as ‘reasonable, fair or just’ and it would fall foul of Article 21.”

Hon'ble Justice S.B. Sinha and Justice Dalveer Bhandari of Supreme Court of India

¹⁰⁰ D.P. Sharma, Speedy Justice and Indian Criminal Justice System XLV THE INDIAN J. OF PUB. ADMINISTRATION 357 (1999). ¹⁴ (1988) 2 SCC 602.

stated as follows:

-Speedy trial is one of the facets of the fundamental right to life and liberty enshrined in Article 21 of the Constitution of India and the law must endure reasonable, just and fair procedure which has a creative connotation.¹⁰¹

The bench was hearing the criminal appeal in a case, in which a Manager of J&K State Bank of India was charge sheeted under the J&K Prevention of Corruption Act for allegedly taking a bribe of Rs.700 in 1980. The court observed that the right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, the stage of investigation, inquiry, trial, appeal and revision. The court further observed that this is to avert any possible prejudice that may result from impermissible and avoidable delay from the time of commission of the offence till its consummates into a finality. The prosecution in the said case did not examine even a single witness in last 26 years. The Court said, -permitting the State to continue with the prosecution and trial any further would be total abuse of process of law. It also took into account the fact that there was no lapse on the part of the accused.¹⁰¹

REPARATION FOR RAPE VICTIMS: JUDICIAL TREND

While the above reflects the role assigned to victims in the criminal justice machinery system, reality reveals that the situation is worse. A victim of a crime in the Indian legal framework is the most discarded person.⁷⁹ While the accused occupies the central place, the victim is reduced to merely being an informant and witness. He has little or no say in the investigation, prosecution and finally, sentencing of the accused. The situation is even worse in case of victims of sexual offences.

The offence of rape is one of the most heinous offences listed in the India Penal Code, 1860. It is an act of violence, which subjects the victim to physical and emotional humiliation, besides pain, fear and serious injury. The apex court has rightly observed that crime of rape is not only a crime against an individual but a crime which destroys the basic equilibrium of the social atmosphere.¹⁰²

¹⁰¹ Hindustan Times, October 13, 2006.

¹⁰² Aileen Adams and David Osborne (2002) Victims Rights and Services: A Historical Perspective and Goals for the 21st Century, 33 MCGLR 673.

Rape involves infliction of wounds on the body as well as the soul of the woman. Hence it requires years to recover from the traumatic experience. In fact, victims have opined that in most cases it is difficult to forget the nightmarish experience of rape. It overshadows the happiness of the entire life. Apart from the psychological part, in forced or violent rapes, the victim may suffer severe injuries over her body. Recovery from the deep-seated problem involves long-term treatment involving lacs of rupees. Unwanted pregnancies and sexually transmitted diseases such as HIV/AIDS are also not unknown. In fact, in a tradition bound conservative society, as in India, the consequences of rape range much wider than mere physical and psychological trauma at the individual level.¹⁰³

Rape is a taboo in Indian societal matrix. It attracts stigma, shame and ostracization, leaving the victim with no opportunities but to live a life of ignominy and isolation.

Unfortunately however, in spite of the gravity and barbarity of the act and its consequences, no concern has ever been shown for the hapless victims of the offence of rape. She has been sneered, mocked and tortured at the hands of the accused and administration for the plight which has befallen on her. The police express extreme apathy and disbelief towards the victim and her narration of events; more often than not, she is held responsible for her behavior; FIRs are not registered; investigations move on in a slow and sluggish manner; crucial evidences are overlooked; the prosecution exhibit extreme depravity and irresponsibility in their work; the trial court remains a silent spectator to the drama which unfolds in the courtroom with irrelevant and humiliating questions being put to the victim and every effort made to prove her complicity in the incident¹⁰⁴. Sadly enough, the victim is often made to relive the pain and feel guilty for her

‘loose and immoral’ behavior resulting in her victimization. Justice delivery ends with the acquittal or conviction of the accused and his punishment. Rarely, the court awards a sentence of fine. As opined by the Supreme Court while discussing the scope and object of Section 357 Cr.P.C., 1973 in *Hari Krishnan and State of Haryana v. Sukhbir Singh* (1988)¹⁰⁵:

“It is an important provision but the courts have seldom invoked it, perhaps due to the ignorance of the object of it. It empowered the courts to award compensation to victims

¹⁰³ Elmar Weitekamp (1992), Towards a victim oriented system, European Journal on Criminal Policy and Research vol. I-1 70-93

¹⁰⁴ Frank D. Hill, Restorative Justice: Sketching a New Legal Discourse. Available at works.bepress.com/context/frank_hill/article/1000/.../viewcontent.

¹⁰⁵ *Hari Krishnan and State of Haryana v. Sukhbir Singh*, AIR 1988 SC 2127.

...It may be noted that this power of the Court to award compensation is not ancillary to other sentences but is in addition thereto. This power was intended to do something to reassure the victim that he/she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is indeed a step forward in our criminal justice system.”

Right to compensation has been recognized as an integral part of right to life and liberty under Art.21 of the Indian Constitution. The Judges said, –Union Govt, States and all concerned authorities must make necessary steps immediately to enforce the right to speedy trial of an accused. This was necessary to make the justice effective, vibrant, and meaningful and ensure that the constitutional right to speedy justice for victims does not remain only on paper or is a mere formality.

The court further observed that the *payment by way of compensation must, however, be reasonable*. What is reasonable may depend upon the facts and circumstances of each case.¹⁰⁶ The quantum of compensation may be determined by taking into account the nature of the crime and the ability of the accused to pay. If perhaps, there are more than one accused they may be asked to pay in equal terms, unless their capacity to pay varies considerably.¹⁰⁷ A reasonable period for payment of compensation, if necessary by instalment, may also be given.¹⁰⁸ The court may enforce the order by imposing sentence in default.¹⁰⁹

Thus, the court must be satisfied that the victim has suffered loss or injury due to the act, neglect or default of the accused to be entitled to recover compensation. This loss or injury may be physical, mental or pecuniary. In *Hari Krishna*, the Supreme Court interpreted the scope of Section 357(3)¹¹⁰ to mean that a reasonable amount has to be awarded as compensation taking into consideration not merely the gravity of the injury or misconduct of the accused but also the capacity of the accused to pay. This practice of taking into account the accused's capacity to pay is problematic as in most cases this either deters the judges from exercising their discretion of awarding compensation or it prompts them to award compensation which is nominal in nature. However, since the State will be establishing a compensation fund for the purpose of compensating victims, this aspect will not play such a

¹⁰⁶ *Ibid.*.

¹⁰⁷ *K.A. Abbas H.S.A. v. Sabu Joseph & Anr.*, (2010) 6 S.C.C. 23

¹⁰⁸ *Ibid.*.

¹⁰⁹ *Ibid.*.

¹¹⁰ *Supra* note 250.

vital role in deterring the exercise of this discretion as it has in the past. The court stated that the High Courts must orient the Judicial Officers in this new aspect of compensatory criminal jurisprudence. The progressive judgment of the Supreme Court in the *Hari Krishna* to compensate victim of crime under Section 357(3) of the CrPC was not allowed by the Court in its later judgments in *Brij Lal v. Prem Chand*¹¹¹, *State of U.P. v. Jodh Singh*¹¹², *State of Mysore v. Tyhappa*¹¹², *N.B. Panth v. State*¹¹³ and *Gur Swami v. State*¹⁶. In these cases the Court awarded compensation to the victims of crime out of the fine amount i.e. under Section 357(1) CrPC and was far more sympathetic toward the accused rather than the victim.

*Baldev Singh v. State of Punjab*¹¹⁴ is another important case in the victimological approach of judicial law making. The Supreme Court ordered a grant of compensation by invoking Section 357(3) of the CrPC. The Supreme Court held that in the circumstances of the case an order of compensation would be more appropriate instead of sentence of imprisonment. Here, the Court used its judicial discretion to the benefit of the victims and opted for the compensation theory instead of extending the sentences of imprisonment.

Though, justice has been meted out to the victims through judicial creativity at the appellate level; these instances are few and far between.¹¹⁵ The provisions in the CrPC after the recent amendment are more holistic in their approach of addressing the plight of victims. However, the infrequency with which these provisions are invoked by judges in a bid to achieve victim justice and to alleviate the suffering of the victim would render these provisions redundant and be the vanishing point of Indian victim compensation.

To effectuate any progressive victim compensation reforms, there is a need for a sensitized judiciary that recognizes the importance of victim compensation. Consequently, the High Courts must orient and train the Judicial Officers towards compensatory criminal jurisprudence. Some positive steps have been initiated with the establishment of judicial academies in each state, where newly recruited judicial officers are sent for training and senior officers are offered refresher courses.

The Govt. of India constituted a Committee on 24.11.2000 for Reforms of Criminal justice

¹¹¹ *Supra* note 50.

¹¹² *State of Mysore v. Tyhappa*, A.I.R. 1962 Mys. 51. ²⁶ *N.B. Panth v. State*,

¹¹³ *Gur Swami v. State*, A.I.R. 1979 S.C.892 A.I.R. 1977 S.C.892.

¹¹⁴ *Baldev Singh v. State of Punjab*, (1995) 6 S.C.C. 593.

¹¹⁵ C. Raj Kumar, *Emergence and Evolution of Victim Justice Perspectives in India*, 25 (2) INDIAN JOURNAL OF CRIMINOLOGY 71, 74-77

system under Dr. Justice V.S. Malimath, which submitted its Report on 21.04.2003. As per Committee, the ultimate object of the system is to render justice, which means punishing the guilty and protecting the innocent. The Committee recommended that the system must focus on justice to victims. A mechanism for coordination amongst investigators, forensic experts, and prosecutors at the state and district level for effective investigations and prosecutions should be devised. The important institution of victim compensation has been weak and somewhat neglected. Its recruitment, training and professionalism need special attention so as to make it synergetic with other institutions and effective in delivering good results. The Committee felt that there is gross inadequacy of judges to cope up the enormous pending and new inflow of cases.

CHAPTER 6

CONCLUSION & SUGGESTIONS

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CONCLUSION

The review of the existing legal framework in relation to rights of victims of crime reveals that except in the area of providing compensation, very little has been done either statutorily or through schemes to address the entire range of problems faced by victims of crime. There is need to take a fresh look at the position in which the victim of a crime is placed in our criminal justice system.

The role of the victim of a crime in our criminal justice system, which follows the common law colonial tradition, is restricted to that of a witness in the prosecution of an offence. This stems from a negative perception of the victim of a crime as a person who has 'suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights.' Resultantly, the criminal justice system acquires a "vertical dimension" and becomes "a means of formal social control" by the state which takes over the prosecution of the offender to the exclusion of the victim¹¹⁶ From a criminological and victimological perspective, these are "value laden judgmental labels that serve no useful research function and thus can be easily replaced by more neutral designations, such as "participants to the conflict", "parties to the dispute", "protagonists" and so forth."¹¹⁷ This view advocates replacement of the vertical^{118,119} criminal justice system by a "horizontal line of justice" where the punishment system is sought to be substituted by a mediation system which gives a central role for the victim.¹²⁰

¹¹⁶ Clause 1 of the U.N. Declaration.

¹¹⁷ Gerd Ferdinand Kirchhoff, "Victimology - History and Basic Concepts" in Kirchhoff et al (eds.) International Debates of Victimology, WSV Publishing (1994), 1 at 63

¹¹⁸ Ezzat A. Fattah, 'some Problematic Concepts, Unjustified Criticism and Popular Misconception', in Kirchhoff et al (eds.)

¹¹⁹ International Debates of Victimology, WSV Publishing (1994), 82 at 84. Fattah argues that this neutral terminology represents a much needed return to the notion of crime as a conflict and the notion of conflict as an interaction. He points out that "normative designations of "criminal" and "victim" imply such a judgment and therefore preempt a thorough and objective investigation into the real and actual roles each party played in the genesis of the crime."

¹²⁰ Gunther Kaiser, "Comparative Prospective Concerning Victim Orientation in Criminology, And Criminal Justice" in Kirchhoff et al (eds.) International Debates of Victimology, WSV Publishing (1994), 104 at 137. The author while emphasising the advantages of the victim - offender mediation points out that this "requires as its foundation a form of organisation which is not directly integrated into the judiciary." Clause 7 of the U.N. Declaration encourages the utilization of informal mechanisms for resolution of disputes "where appropriate to

Our system however has persisted with the vertical dimension model.

The reorienting of the criminal justice system to address the needs of a victims of crime need not and perhaps should not be exclusive of the need to enforce and protect the rights of suspects as well as the rights of the accused. It should be possible to accommodate both requirements as has been done in countries like United Kingdom and the United States of America. To begin with it is essential to acknowledge that our legal system is not equipped at present to effectively deal with mass crimes, including the crimes of genocide and crimes against humanity.¹²¹ The setting up of a witness and victim protection unit under the control of an independent and accountable agency by suitably modifying the available models, e.g., the one provided by the Statute for the creation of the ICC, becomes imperative. This ought to be built into the statutory legal framework itself.

The limitation of the resources of the State in making adequate provision in the form of a victim assistance fund ought not to be countenanced any longer.¹²² The attempt at devising a scheme of witness protection will have to be preceded by a wide range of consultations by the law making body with not only victims of crime but other statutory bodies like the National Human Rights Commission which are plagued with a rising number of complaints.¹²³ The approach would also have to be multi-disciplinary involving, inter alia, sociologists, law persons and professionals from the field of medicine. Given the endemic delays faced by litigants in the present legal system, it would be appropriate to develop alternative forms of dispute resolution without diluting the need for providing fair and equal justice to victims of crime. The U.N. Declaration continues to serve as a useful benchmark in reordering the criminal justice system to address the needs of victims of crime. Although the Malimath Committee has recommended that “the victim has a right to be represented by an advocate of his choice; provided that an advocate shall be provided at the cost of the state if

facilitate conciliation and redress for victims.”

¹²¹ For a detailed analysis of the failure of the legal system to deal with the mass killings of 2733 Sikhs in Delhi in November 1984 in the wake of the riots following the assassination of the Prime Minister. Vrinda Grover, “Quest for Justice 1984 Massacre of Sikh Citizens in Delhi” (2002) (mimeo)

¹²² See generally S. Muralidhar, “Legal Aid and the Criminal Justice System in India”, thesis submitted to the degree of Doctor of Philosophy (April 2002)

¹²³ The Supreme Court has time and again negated such a plea: See *State of Maharashtra v. M. P. Vashi* (1995) 5 SCC 730

the victim is not in a position to afford a lawyer”,¹²⁴ this fails to acknowledge that the present state of implementation of the statutory provisions concerning free legal aid in the criminal justice system leaves much to be desired. The reform of the criminal justice system as a whole will have to be simultaneous with the reform of the legal aid system before a victim of crime be guaranteed an effective right of representation in a criminal trial.

The expanding universe of compassionate criminology must so respond realistically to the new challenge of human rights and social justice as to salvage, solace and resituate victims of crime and abuse of power by resorting to new methodologies of reparative, compensatory, preventive and other judicial remedies. The victims of crime must claim our attention. Injustice to him/her can be fully undone only by restorative justice, beyond punishment of the offender. The most important interest of the victims of crime is restitution, from the victim's¹²⁵ point of view; restitution is beneficial because it helps to make whole the victim's crime related loss. The present laws in the absence of legal mandate to pass an order of restitution to the victim of crime in appropriate case only do lip service to them. Making a mandatory provision for compensating the victim of crime by offender *may* not solve all the problems of the victim of crime, because this provision also will suffer from the same disadvantage that the offender in most of the cases would be discharged or acquitted due to lack of evidence or other technicality in the procedure.

As the provision merely emphasizes that the victim of crime be compensated only on conviction, it is not likely to be of real help. There is therefore an urgent need to establish a victim assistance and compensation board to provide assistance and compensation to the victim of crime. Therefore, it is high time that the government of India should come forward with a scheme/program to provide compensation and assistance to the victims of crime for their loss or injury. As we know the victims as well as the accused/offenders in most cases are

¹²⁴ Report of the Malimath Committee, 270.

¹²⁵ The Annual Report of the NHRC for the year 1998-99 reveals that the number of deaths in police custody and judicial custody were 183 and 1,114 respectively. There were 436 cases of illegal detentions and 2,252 cases of other police excesses. The official statistics of the National Crime Records Bureau also acknowledges that there were as many as 78 deaths in police custody and over a 100 deaths during “production/ process imports/ journey connected with investigation”: Crime in India, 2000, 355-356.

necessarily poor, restitution alone cannot solve the problems of the victim of crime. Therefore, a consolidated victim welfare fund may be created on a statutory basis, the fund will be created from the total amount collected by the State as fine from the offenders/accused and also a suitable and matching grant should be provided by the State. A Board named, as victim Welfare *Board*, which will be of non-political composition, will administer the fund. The payment of compensation shall be left to the discretion of the Board and it may refuse payment where there has been undue delay in reporting to police about the occurrence and also where the victim contributed to the commission of the crime¹²⁶.

For too long the victim of crime have been forgotten and forsaken lots of the criminal justice system. If the victims come to regard their treatment as unfair, distorting of reality or little concerned with their own rights, feeling and interest or if the decisions are made which are felt to be unsatisfactory, it is possible that this "Secondary Victimization" by the system may lead to disinterest and future non cooperation by the victim. When the victim chooses not to cooperate with the system, it will collapse. Therefore, there is a need for renewal of emphasis and enhanced sensitivity to the rights of the victim. Victim's right to assistance is now more acceptable in the developed countries. In India, though there are very limited legal provisions for compensation to the victims of crime by the offender, it received a very cold reception at the hands of judiciary. Hence, there is an urgent need for streamlining the system by legitimately including victim's rights and interests in the system. So also, the victim should be made "whole" with monetary recovery and support service¹²⁷.

In this context, it is pertinent to note that the Supreme Court in *State of Gujarat v. Honorable High Court of Gujarat*¹⁰ directed the state governments to frame law to pay compensation to the victims of crime from the earning during their sentence period. Such compensation should either be paid directly to the victims or through common fund to be created for this purpose or any other feasible mode. Enacting a law on these lines will be in the fulfillment of the constitutional obligation of the State under Articles 39 (1) and 41 of the Constitution of India, which vouchsafe justice and equal protection of law. The new

¹²⁶ The UN general assembly's adopted Declaration on the basic Principles of Justice for victims of crime and abuse of power (1985)

¹²⁷ Fatt E.A "Restorative and retributive Justice" (London)(1995)

enactment will also be in accordance with U.N. Declaration *of* Basic Principles *of* Justice for Victims *of* Crime and U.N. Declaration of Basic Principles and Guidelines on the "Right to Reparation for victims *of* violation *of* Human Rights¹²⁸.

¹²⁸ Suprem court cases in the state of Gujarat v. Honorable High court of Gujarat for right tovictims (2008)

SUGGESTION AND RECOMMENDATIONS

In light of the discussions made in this thesis, the following recommendations are made which may help in making victim services more effective

1. Develop a comprehensive legislation by Parliament that will
 - help to cater to the needs of the victims of crime in keeping with the global jurisprudence in this field.
 - remove disparity in the provisions of different VCS.
 - guide States in setting up an online repository of victims' rights and compensation schemes and support services.
 - help States and guide in setting up online hassle free method of filing an application.
 - provide how effective and uniform medical and psychological support be provided to the victims of crime across the States.
2. Create a helpline that will provide information about VCS and guide the victim about from where to get aid and how to access these schemes.
3. There should be relaxation of the reporting and claims time frame, and for allowing the initial report to be made to non-law enforcement agencies, such as counselors or medical personnel. The current requirements represent a very calculated attempt to bring victims back into the criminal justice system.
4. Awareness regarding victim compensation and support services be created by way of putting posters, banners, advertisements through print media, radio, television, social media, and digital media. India driving towards digital India, can do a lot in creating awareness and implementation of victim services.
5. Create toll-free service that will provide victims of crime advocacy and support.
6. Increase coordination amongst various agencies of the CJS in order to develop an effective victim assistance.
7. For support services, train people involved in various agencies of CJS like police, judges with victim assistance schemes. Prepare and train paralegal force under NALSA for helping victims.

- 8 Individual and Family counseling to victim should be provided and special attention should be given to those having special needs and psychological impacts of crime. E.g. feeling of helplessness, loneliness, anger, sadness, stress, or could be severe like Depression, Anxiety, PTSD (Post Trauma Stress Disorder), and psychosomatic disorders etc
- 9 Enhancement of our understanding by learning the Psychological First Aid – a service promoted by WHO for people in crisis.
- 10 We are committed to grow further in this section, and are looking forward to collaborate with more mental health professionals, telephone help-lines providing professional mental health services, and join hands with "Mental Health Functionaries" designed under the Mental Health Act, 2018 to expand reach of mental health services to the whole society.

The discussions carried out in this research paper approves the hypothesis made by the researcher i.e. adequate compensation and support services to the victims is an imperative for an integrated and effective criminal justice administration. Looking into the different jurisdictions and their initiatives regarding victim compensation and support services shows that compensation and support services are imperative need for an effective victim justice and CJS. In India, the coming of VCS, CVCF guidelines, amendments to the CrPC in 2008 and 2013 proves that victims of crime cannot be ignored and that a way of rectifying the harms done to them is by providing compensation services and support services. By providing such services, the victims of crime can again be used as an efficient human resource of the nation

The Challenge of change is to overcome our fears of the unknown and to face them head on with as much knowledge as we can. As Jawaharlal Nehru wrote:

“Nothing in the world that is alive remains unchanging. All Nature changes from day to day and minute to minute- only the dead stop growing and are quiescent. So it is with the life of man, the life of a nation and the life of the world.”¹³

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