



COMPENSATORY JURISPRUDENCE FOR VICTIMS OF SEXUAL OFFENCES IN INDIA: AN APPRAISAL

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Abstract

Criminal law is seen only for the state and criminals. While the primary purpose is to protect society, the individual victim in crime has always been overlooked. Victims are the 'bye products of crime'. The basic object of the Criminal Justice is to protect the society against crime and to punish the offender. However, Criminal Justice System does not show equal concern to the victims of crime, who have suffered loss or injury. The satisfaction the victims get from justice is the punishment inflicted upon the criminal. The tendency of modern criminologists is to stress on the reform, rehabilitation and legal aid of the accused. The object of the punishment is not merely to shelter and reform the criminals but there is need for safeguarding the interests of the victims also. To maintain the law and order in the society, the civilized state does not allow a victim to take the law in his hands either to punish the wrongdoer or re-compensate the loss suffered or injury sustained. The objective of this research paper is to understand the jurisprudential approach to compensation for victims of sexual crimes in India.

Keyword: *Compensatory Jurisprudence, Crime, Sexual Offences, victimology*

INTRODUCTION

Criminal law is seen only for the state and criminals. While the primary purpose is to protect society, the individual victim in crime has always been overlooked. Victims are the 'bye products of crime'. Victims' cries for justice are often ignored and given little attention in the criminal law framework. This has resulted in a 'disorder in the administration of criminal justice'. The notion that the victim gets justice when the perpetrator is convicted is unfair and unjust. Inequalities of criminal administration subject the victim to another level of victimization, which is at the hands of the system, i.e. 'secondary victimization'. The dire need for victim-centric legislation that ensures victims' rights at the pre-trial, trial and post-trial stages has been raised by academics and activists. Justice to victims is vital to restore balance in the criminal administration. Despite provisions in the Indian Constitution and the Code of Criminal Procedure, 1973 relating to victim compensation, criminal courts have rarely invoked

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them. In the late 1980s, constitutional courts began to develop 'compensatory remedies' to alleviate the plight of not only victims of traditional crimes, but also crimes committed by the state or its instrumentalities. The report of the Committee on Criminal Justice Reforms (Justice V. S. Malimath Committee Report) gave considerable importance to the victims of crime and suggested substantial reforms in the field of victimology.³

However, recent conceptions of justice have led to a paradigm shift in this approach in international and national law. Earlier it was believed that by punishing the accused by imprisoning him or imposing a fine, the ends of justice were fulfilled. It is now considered a restrictive method. Appropriately, the Indian Penal Code, 1860, a law that covers most substantive offences, prescribes only five types of punishment for offenders. Death, life imprisonment, imprisonment (hard or simple), fine, confiscation of property, all speak in the language of deterrence or retribution. The person who has actually suffered i.e. the victim does not get much if these punishments are meted out to the culprits as well. The grant of compensation to victims of crime has existed since primitive society; it revived in the mid-20th century. Whenever there is a discourse on reforming the criminal justice system, victims have taken a front seat.⁴

Compensation can be punitive, corrective or proportional to the damage caused. It depends on the purpose of awarding compensation by the court. Several justifications have been used for reparations, such as: benefit to victims, symbolic social recognition for victims, adverse effect on the offender as well as corrective effect on the offender because the payment of reparations has "**intrinsic moral value**". Jeremy Bentham justified the payment of reparations in the theory of the social contract in which it is the duty of the state to protect the person and property of the citizen. State reparations are all the more justified because these are the political, economic and social institutions of the state. which create crime through poverty, discrimination, unemployment and insecurity.⁵

The basic object of the Criminal Justice is to protect the society against crime and to punish the offender. However, Criminal Justice System does not show equal concern to the victims of crime, who have suffered loss or injury. The satisfaction the victims get from justice is the punishment inflicted upon the criminal. The tendency of modern criminologists is to stress on the reform, rehabilitation and legal aid of the accused. The object of the punishment is not merely to shelter and reform the criminals but there is need for safeguarding the interests of the victims also. To maintain the law and order in the society, the civilized state does not allow a victim to take the law in his hands either to punish the wrongdoer or re-compensate the loss suffered or injury sustained. Traditionally, Criminal Administration of Justice assumes that the claim of the victim is sufficiently satisfied by the conviction and the sentence of the offenders. However, in the present scenario this traditional thinking seems to be unjust, unfair and inequitable when society and state are resorting to every possible measure for correction and rehabilitation of the offender and on the other side not displaying equal concern for compensating victims of crime. While the principles of retribution and retaliation as an approach to punishment of criminals cannot be

³ Justice V.S. Malimath, Report Of The Committee On Reforms Of Criminal Justice System, Government Of India, Ministry Of Home Affairs,(2003), Retrieved From https://Mha.Gov.In/Sites/Default/Files/Criminal_Justice_System_2.Pdf.

⁴ G.S. Bajpai. *Victim In Criminal Justice Process: Perspectives On Police And Judiciary* (New Delhi: Uppal Publishing House,1997) 18.

⁵ V.V.Devasia, and Leelamma Devasia. *Criminology Victimology And Corrections* (New Delhi : Ashish Publishing House 1992) 38.

accepted in today's criminal law jurisprudence, the injury and suffering caused to the victims should also not be neglected. Compensatory jurisprudence as new part of criminal law is fast developing as it serves two purposes, firstly, a victim is not lost sight of in the criminal justice system and secondly, an accused convicted is made to realize that he has a duty towards those injured by his actions. Currently, movement is growing in several countries, including our own, to reexamine the problem of compensation or restitution to the victim. Realizing that the offender is in no position to pay the indemnity for his act, criminal lawyers, criminologists and social workers, are contemplating the possibility of the State making compensation to the victim.⁶

Although it is the courts that uphold the sanctity of justice, it is the prerogative of the state to uphold the pillars of justice. Jurisprudence related to victimology has widely debated where to place the ball of responsibility, whether the responsibility of the state ends only with filing, investigating, prosecuting and punishing the accused or whether Apart from following these steps, the state has other responsibilities to the victim.⁷

GENESIS OF COMPENSATORY JURISPRUDENCE IN INDIA

The doctrine of Victimology and victim compensation has its foundations in the Indian Constitution particularly in the Fundamental rights and Directive principles of State policy, which form the fortification for a new social order in which social and economic justice would be ensured. Article 51A enshrines a fundamental duty on every citizen to have empathy for living creatures and to develop humanism. This directive expressly provided for in the Constitution, broadly forms the constitutional underpinnings for Victimology. A significant phase in the evolution of Victimology in India was witnessed in the 1980s, through the creative judicial decisions delivered by the Appellate Courts.⁸

There were a series of decisions handed down in the 1980's and 1990's by the Supreme Court that seemed to recognize the special right of the victim to compensation for harm suffered either at the hands of a private criminal or in the course of criminal justice administration.⁹ The decision in *Tukaram & Anr. v. State of Maharashtra*¹⁰, popularly known as Mathura rape case was perhaps the lowest point of the Indian judiciary, highlighting the blatant insensitivity of the judiciary coupled with weak and ineffective Laws relating to rape. A new era in the Indian victimological thinking began with the initiative taken by the Indian judiciary in the nature of evolving a new kind of compensatory constitutional remedy through Articles 32, 226 or 227. Crime analysis across the globe reflects the fact that there cannot be a society without crime and criminals, tragedy and violence. Crime is a social phenomenon. Crime is one of the most central problems faced by the modern society. No society primitive or modern, no country whether developing or developed is free from its clutches. Crime damages the

⁶ Retrieved From <https://Egyankosh.Ac.In/Bitstream/123456789/38912/1/Unit-2.Pdf>, Visited On December 7, 2022

⁷ Ibid

⁸ Retrieved From <https://Www.Legalservicesindia.Com/Law/Article/1241/5/Basic-Principles-Of-Victims-Of-Crime-With-Including-The-Challenges-And-Current-Scenario-In-India>, Visited On December 13, 2022

⁹ Arvind Lakhawat, *Compensatory Jurisprudence In India*, Retrieved From <http://Www.Legalservicesindia.Com/Article/2035/Compensatory-Jurisprudence-In-India.Html>, Visited On December 13, 2022

¹⁰ (1978) Cri. L.J. 1864(SC)

Social fabric of the society. The Criminal Justice System must do more than punishing the criminal. It must seek to heal the wounds of the victim-emotional, physical and financial caused by crime. This is a difficult but crucial and indispensable goal.¹¹

The system of administering Criminal Justice is to be assessed on the basis of its ability to secure justice to the victim of a crime and protect the rights of the accused. Criminal Justice System should strike a balance between the interests of the victim and the rights of the accused in the scales of justice. The Criminal Justice System in India through the Code of Criminal Procedure and the Constitutional provisions indicate that there is lack of equilibrium in the scales of justice in the area of victim compensation. The balance is tilted in the favour of the accused and every step in the process is oriented to the protection of the accused.¹²

CONSTITUTIONAL REMEDIES FOR VICTIM'S COMPENSATION

The principles of Victimology have its foundations in the Indian Constitution chiefly in the Fundamental Rights and Directive Principles of State policy, which form the fortification for a new social order in which social and economic justice would be ensured. The Indian Constitution has several provisions which endorse the principle of victim compensation. The assemblage of clauses dealing with Fundamental Rights¹³ and Directive Principles of State policy¹⁴ laid the foundation for a new social order in which justice, social and economic, would flower in the national fabric of the country.¹⁵

There are several provisions under the Indian Constitution which directly or indirectly recognize the rights of victim and also provide for the fundamental policy for protecting and promoting the victim's right. The provisions in the Preamble, Part III and Part IV of the Constitution are relevant in this regard. The dignified principle of brotherhood pledged in the preamble is the first to begin with the idea of protecting rights of victim. Compensation, restitution or rehabilitation is core to achieve such an ideal State of society where victim may find himself in having confidence and support of other members of the society and getting a change of his or her being rehabilitated.¹⁶

The theory enshrined under the Constitution¹⁷ ensures equal protection of Laws that demands care and protection of victim by and within the Code of Criminal Procedure Code which till now may have tendency to protecting rights of offenders only. Fundamental right to life and personal liberty, enshrined in Article 21 of the Constitution is wide enough to include greater protection to the victims of crime and as it insures human dignity

¹¹ Ibid.

¹² Retrieved From <https://knowlaw.in/index.php/2021/11/17/scales-of-justice-balancing-the-rights-of-victim-and-the-offender/>, Visited On December 15, 2022

¹³ Part III, The Constitution Of India, 1950

¹⁴ Part IV, The Constitution Of India, 1950

¹⁵ Article 38, The Constitution Of India, 1950

¹⁶ Retrieved

From https://www.icsi.edu/media/webmodules/CSEET/LEGAL_APTITUDE_AND_LOGICAL_REASONING_Printable.Pdf, Visited On December 14, 2022

¹⁷ Article 14, The Constitution Of India, 1950

to all, it must recognize rights of victim by providing them better care and protection as has been observed in the case of *Hussainara Khatoon v. State of Bihar*¹⁸, which was also followed in the case of *Joginder Singh v. State of Uttar Pradesh*¹⁹.

The Directive Principles of State Policy under Part IV of the Constitution provides for basic policies for the social and economic betterment and development of individual as well as groups and thereby provides foundation for a new social order⁶ in which justice, social and economic, would flower in the national life of the country.²⁰ It insures that the State shall make effective provision for securing public assistance in cases of disablement and in other cases of undeserved want.²¹ This provision has great visions of Victimology, in a wider perspective, as it mandates that public assistance must be provided to such vulnerable sections of society. In fact, crime victims and other victimized people fall into the domain of Article 41 which gives every individual right to work, to education and to public assistance. Article 46 further mandates to protect weaker sections of people from all forms of exploitation. In India majority of victims belong to weaker section of society who is not in a position to afford justice. Article 51²² directs the State to make endeavour to —foster respect for International Law and treaty obligations in the dealings of organized people with one another. The Supreme Court has referred to many international Conventions, Covenants and Declarations in this regard while interpreting the provisions of fundamental rights in the landmark case of *People's Union for Civil Liberties v. Union of India*.²³ In *Nirmal Singh Kahlon v. State of Punjab*,²⁴ the Honorable Apex Court observed that the right to fair investigation and trial is applicable to the accused as well as the victim and such a right to a victim is provided under Article 21 of the Constitution of India. Therefore a victim of a crime is equally entitled to a fair investigation.

Article 41 of the constitution of India which is relevant 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 refuge of Article 41. Article 51-A (g) of the constitution of India makes it fundamental duty of every citizen to protect and improve the natural environment and to have compassion for living creature and to develop humanism. The guarantee against unjustified deprivation of life and liberty under Article 21 has in it rudiments, which obligate the State to compensate victims of criminal violence. If empathetically interpreted and imaginatively expanded, the Constitutional beginnings of Victimology can be found here.

In order to achieve this and other objectives, the Constitution laid down the implementation procedure in Parts III and IV which are known as Fundamental Right's and Directive Principles of State Policy⁶ respectively. Part III not only guarantees rights against the actions of the State, but also equally provides for the Constitutional remedies by way of writs under Article 32 of the Constitution to the Honorable Supreme Court and under Article

¹⁸ AIR 1979 SC 1360

¹⁹ 1994 AIR 1349

²⁰ Article 38, The Constitution Of India, 1950

²¹ Article 41, The Constitution Of India, 1950

²² Article 51, The Constitution Of India, 1950

²³ AIR 1997 SC 568

²⁴ (2009) 1 SCC 441

226 to move the High Court for the enforcement of these Fundamental Rights. Under these Articles the victim can not only get his rights enforced in an expeditious manner but he can also claim compensation for the alleged violation of Fundamental Rights by the State. This claim in Public Law or compensation for unconstitutional deprivation of the guaranteed Fundamental Rights is a claim based on strict liability and is in addition to the claim available in Private Law for damages to the victim. *Justice Chandrachud*, observed that our Constitution aims at bringing about a synthesis between Fundamental Rights and the Directive Principles of State policy by giving to the former a place of pride and to the latter a place of permanence.²⁵

EMERGING TRENDS IN COMPENSATORY JURISPRUDENCE

In India there is no comprehensive legislation to deal with the matter of compensation to the victims of crime. Indian criminal legal system does not provide for institutionalized payment of compensation to the victims of a crime for any loss or injury physical, mental or psychological caused to him by the offender. Interestingly, even the Law Commission in its 42nd report felt it unwise to create a legal right in favour of the victim to join in the criminal proceedings as a third party to avoid mixing up of civil and criminal proceedings, a confusion of issues and prolongation of the trial.²⁶ However, it favored payment of compensation out of fine imposed on the offender. The Law Commission also mentioned three patterns for payment of the compensation i.e. by the State, the accused and the Court.²⁷

It is quite clear from a perusal of the available laws that India did not have any fixed criteria for compensating crime victims, not that the courts were not compensating crime victims, but their reach was limited. This format of compensation was introduced in 1969 by the Law Commission in its 41st Report.²⁸ The Fifth Law Commission, in 41st Report²⁹ in 1969, dealt with compensation to victims of crime in India.

Justice V.R. Krishna Iyer fore-grounded the extended apathy of the Criminal Justice System in the landmark case of *Rattan Singh v. State of Punjab*³⁰ “It is the weakness of our jurisprudence that victims of crime and the distress of the dependents of the victim do not attract the attention of Law. In fact, victim reparation is still the vanishing point of our criminal Law. This is the deficiency in the system, which must be rectified by the legislature”.

The 14th Law Commission, in its 156th Report³¹ on the Indian Penal Code, recalling its earlier recommendation made in 1996 in its 154th Report on the Criminal Procedure Code for framing a “Victim Compensation Scheme” by State Government and realizing that the payment of compensation as an “additional punishment” not only requires an inquiry into a variety of circumstances but also a few cases may not warrant compensation by of punishment, opined that it would be “not appropriate” to include order of payment of

²⁵ J.P.S. Sirohi. *Criminology And Penology*(Faridabad: Allahabad Law Agency, (7th Ed.) , 2011) 629

²⁶ Law Commission Of India, Indian Penal Code 1860, 42nd Report 1971

²⁷ Ibid.

²⁸ Law Commission Of India, The Code Of Criminal Procedure, 1898, Forty First Report, 1969

²⁹ Law Commission Of India, The Code Of Criminal Procedure, 1898, Forty First Report, 1969

³⁰ AIR 1980 SC 84

³¹ Law Commission Of India, The Indian Penal Code, 1860, One Hundred And Fifty-Sixth Report, 1997

compensation in section 53 of the I.P.C. by way of punishment.³² The Law Commission in its 154th Report discussed in detail various aspects of Victimology. The Law Commission Report³³ says, “*The principles of compensation to crime victims need to be revised and expanded to cover all cases.*” The compensation should not only be limited to fines, penalties and forfeiture realize.

The Malimath Committee³⁴ in its recommendations perceived that “justice to victims” is one of the inseparable imperatives of the Criminal Justice System in India. It argued for the holistic justice to victims of crime by allowing them, as a matter of right, in criminal proceedings as well as to seek compensation for loss or injury. Besides giving so many recommendations for reformation of Criminal Justice System, to improve the position of victims of crime in the including the victim’s right to participate in cases, it has made strong recommendations to provide immediate compensation to the victims of crime. The decisions in *Nilabati Behera v. State of Orissa*³⁵ and in *Chairman, Railway Board v. Chandrima Das*³⁶, are illustrative of this new trend of using constitutional jurisdiction to do justice to the victims of crime. The committee also examined the rights of the victims of crime in different Criminal Justice Systems worldwide.

The Justice Malimath Committee on Criminal Justice Reforms (2003) outlined several measures to ensure that victims of crime play an active role during investigation and trial so that their interests are better protected. It called upon the need to amend the Code to make it more responsive to the needs of victims. Over the years The Code of Criminal Procedure has been amended to guarantee protection to the victims of sexual offences. Some important ones include:-

- Mandatory recording of FIR by a woman police officer where the informant is a woman against whom a sexual offence (as defined under the provisions of Indian Penal Code) is alleged to be committed or attempted. This condition is also to be followed even during the stage of investigation wherein the statements of such victims are to be recorded.
- If a person, who is a victim of sexual offences, is mentally or physically disabled then FIR is to be recorded at their residence or other convenient place of choice and in the presence of an interpreter. Moreover, this recording is to be video graphed.
- In case of rape the statement of the victim is to be recorded at victim’s residence or a place of choice and in the presence of her parents or guardians or near relatives or social worker.
- The statements of such victims of sexual offences are to be recorded by a Judicial Magistrate as soon as possible. In case the victim is mentally or physically disabled, assistance of an interpreter is to be taken and the process of recording is to be video graphed. Further, such disable victims need not repeat the statement at the time of trial.
- Provision for medical examination of the victim of rape within 24 hours of the police receiving information

³² Law Commission Of India, The Code Of Criminal Procedure 1973, One Hundred And Fifty-Fourth Report, 199

³³ Law Commission Of India, The Code Of Criminal Procedure 1973, 154th Report, 1996.

³⁴ V.S. Malimath Committee, Reforms Of Criminal Justice System, Report, March 2003

³⁵ (1993) 2 SCC 746

³⁶ 2000 Cr. L.J. 1473 SC

and only after consent is given by her or on her behalf.

- In case of rape of a child, the investigation is to be completed within three months from the date on which FIR was recorded.
- **A victim can engage an advocate of his/her choice to assist the prosecution with the permission of the court.**
- In case of offence of rape and other sexual offences, the court shall be presided over by a woman judge.
- A victim of rape or other sexual offences, who is below 18 years of age, is not to be confronted by the accused while recording of evidence.
- The inquiry or trial in the cases of sexual offences must be concluded within two months from the date of filing of charge sheet.
- Provision for in-camera trial in case of rape and other sexual offences and the same shall be conducted by a woman judge.
- Confidentiality of name and address of rape victims to be maintained.
- The victim shall have a right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation.
- Provision for free and immediate first-aid or medical treatment to the victims of acid attack, rape and other heinous sexual offences.

Despite progressive legislative amendments and an increasing trend to involve the victims in the investigation and trial of crimes rather than treating them as mere spectators, the will of the State Governments and lower courts has lacked to match the vigour of Supreme Court. The Supreme Court in *Suresh v. State of Haryana (2015)* observed that, “It has been brought to our notice that even though almost a period of five years has expired since the enactment of Section 357-A CrPC, the award of compensation has not become a rule and interim compensation, which is very important, is not being granted by the courts. It has also been pointed out that the upper limit of compensation fixed by some of the States is arbitrarily low and is not in keeping with the object of the legislation.”

Recently in *Taken v. State of M.P.*³⁷ (2016), the Supreme Court has called for uniformity in the victim compensation schemes of different states. The Court noted that maximum compensation for rape ranges from a dismal Rs. 20,000 to Rs. 10, 00,000. Such wide gap was called to be introspected upon by the States. Many states have taken a positive step in this regard to amend their Victim Compensation Schemes for instance Delhi had amended its scheme in 2015 to enhance the upper limit of compensation for victims of rape from Rs. 3,00,000 to Rs. 5,00,000 and for victims of acid attacks from Rs.3,00,000 to Rs.7,00,000. However, this amendment has not been notified yet.

³⁷ Retrieved From <https://indiankanon.org/doc/62755573/>, Visited On December 15, 2022

COMPENSATORY PROVISION FOR THE VICTIMS OF SEXUAL OFFENCES UNDER THE CODE OF CRIMINAL PROCEDURE, 1973

Various recommendations of the Committee and the Law Commission reports led to Act No. 5 of 2009, which amended the provisions of Criminal Procedure Code, 1973, and conferred victims certain rights for the first time. Initially in pursuance of the Malimath Committee Report the Ministry of Home Affairs of the Government of India, prepared the Criminal Law Amendment Bill, 2003, but it never saw the day of light.³⁸ Following the various Reports and Judgments of various Courts the Government of India introduced Criminal Procedure (Amendment) Act, 2008. The Amendment Act has brought significant changes in the status of victims in Criminal Justice System. Section 357-A to C of the Code of Criminal Procedure, 1973 amended in 2008, introduced the Victim Compensation Scheme. It directs the States to provide compensation to victims or dependents, irrespective of the status of the trial and also empower the State and District Legal Services Authority to provide compensation and medical aid.

Parliament in 2008 and 2013 and the Hon'ble Supreme Court have also directed States to compensate victims of rape. The Supreme Court also upheld the right to reproductive choices of a woman, who has been raped in a State-run welfare institution. While the Courts are empowered to decide on punishment, statutory amendments have brought changes in the manner in which victims may receive compensation and be rehabilitated.

In 2013, new provisions under sections 326-A and section 326- B (Acid Attack)³⁹ and section 376-D (Gang Rape) inserted in The Indian Penal Code which provides for a fine for medical expenses and rehabilitation of victims⁴⁰

The Code of Criminal Procedure 1973 was amended in 2008 and the concept of Victimology has undergone transformations. . Sections 357-A to C of the Code of Criminal Procedure, also brought in 2009, introduced the Victim Compensation Scheme, directing states to provide compensation to victims or dependents, irrespective of the status of the trial and also empower the State and District Legal Services Authority to provide compensation and/or medical aid. Parliament in 2009 and 2013 and the Supreme Court have also directed states to compensate victims of rape. The SC also upheld the right to reproductive choices of a woman, who has been raped in a State-run welfare institution. This judgment was recently upheld by the SC bench in the privacy case.

⁴¹Section 357A has been inserted in the amended act to give wider compensatory rights to the victims of crime. It reads as:-

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

³⁸ Bill No. LX Of 2003, Introduced In Rajya Sabha On August 22, 2003

³⁹ Retrieved From <https://www.probono-india.in/blog-detail.php?id=214>, Visited On December 14, 2022

⁴⁰ Retrieved From

⁴¹ Retrieved From <https://www.hindustantimes.com/opinion/put-the-victim-at-the-centre-of-the-justice-system/story-8cyb95drqmij00jqnshvi.html>, Visited On December 14, 2022

- Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1) .
- If the Trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.
- Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.
- On receipt of such recommendations or on the application under sub-section (4) the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
- The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”

The Code of Criminal Procedure (Amendment) Act, 2008 is indeed a welcome development to ameliorate the plight of victims in the Criminal Justice System. The basic merit of this Amendment Act is that it has for the first time given the definition of the term “victim”.

Section 357A has laid down the foundation-stone of modern compensatory jurisprudence because the other provisions are inadequate and have failed to fulfill the demand of time. This new section envisages the new vision. Now the State Governments with the co-operation of the Central Government is to provide the funds so that adequate compensation can be given to the victims. In other, words by this amendment the State has assumed the responsibility to give the compensation to the victims of crime. In this section, victim includes the dependents of victims and all those who injured or suffered the loss. Now, the Courts have been given the role of only recommendation for compensation and it is the State or the District Legal Services Authority which will decide the quantum of compensation. ⁴²New section also deals with the situations where trial results in acquittal or inadequate compensation under section 357 has been awarded and accused is untraceable or not identifiable. ⁴³After getting recommendations or application, State or the District Legal Services Authority will award due compensation by completing the inquiry within 2 months. The State or the District Legal Services Authority may also order immediate first-aid facility or medical benefits free of cost on either certificate or police officer not below than SHO or concerned magistrate and any other interim relief as the appropriate authority considers just in light of circumstances of each case. Therefore we can say that the provisions of said section 357 (A) are noble and grand. If these provisions are truly implemented, then it would truly be a new milestone in ameliorating the status

⁴² Retrieved From https://wcd.nic.in/Sites/Default/Files/Final%20VC%20Scheme_0.Pdf, Visited On December 15, 2022

⁴³ Ibid

of forgotten victim in criminal justice system.⁴⁴

COMPENSATORY REMEDIES FOR THE VICTIMS OF SEXUAL OFFENCES IN INDIA WITH REFERENCE TO CRIMINAL LAW AMENDMENT ACT, 2013

The Criminal Law (Amendment) Act of 2013 went further for giving more rights to the victims. After section 357A of the Code of Criminal Procedure, the following new sections have been inserted. The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under section 326 A or section 376D of the Indian Penal Code⁴⁵. All hospitals, public or private, whether run by the Central Government the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326-A, 376, 376-A, 376-B, 376-C, 376-D or section 376-E of the Indian Penal Code, and shall immediately inform the police of such incident.”⁴⁶

MAJOR SCHEMES FOR VICTIMS OF SEXUAL VIOLENCE

Violence and abuse against women and girls is frequent on streets, in public transportation and in other public places. Such occurrences restrict women’s right to mobility, discouraging their freedom to walk freely and move in public spaces of their choice. Such violence also limits their access to essential services and adversely impact their health and wellbeing. In this context, and following the tragedy of December 2012, the Government has set up a dedicated fund “Nirbhaya Fund” which can be utilized for projects specifically designed to improve the safety and security of women. It is a non-lapsable corpus fund, being administered by Department of Economic Affairs, Ministry of Finance . The Criminal Law (Amendment) Act, 2013⁴⁷ was enacted to address the inadequacy in law relating to sexual offences against women and children, which led to the creation of the Nirbhaya Fund. The Central Government also set up the Central Victim Compensation Fund Scheme vide the notification dated 14-10-2015, by the Ministry of Home Affairs.⁴⁸ However, last year, it was reported that only 36 per cent of the Nirbhaya Fund had been utilized in the past seven years, which speaks in volumes of the enforcement backdrops apropos India’s bureaucracy.⁴⁹ Moreover, 99 per cent of the minor rape victims of sexual assault remained without any compensation.⁵⁰ Some of the major schemes approved for implementation under

⁴⁴ Ibid

⁴⁵ Section 357 B, The Code Of Criminal Procedure (Amendment), Act, 2013.

⁴⁶ Section 357 C, The Code Of Criminal Procedure (Amendment) , Act, 2013.

⁴⁷ Retrieved From [Http://Www.Scconline.Com/Documentlink/Nus8w4n9](http://www.Scconline.Com/Documentlink/Nus8w4n9), Visited On December 15, 2022

⁴⁸ Central Victim Compensation Fund Scheme Guidelines, Ministry Of Home Affairs, 2015, [Https://Www.Mha.Gov.In/Sites/Default/Files/Cvcffuidelines_141015_1_0.Pdf](https://www.Mha.Gov.In/Sites/Default/Files/Cvcffuidelines_141015_1_0.Pdf) Retrieved From December 16, 2022

⁴⁹ Fatima Khan, Only 36% Of Nirbhaya Fund Used Since 2013, Panel Tells House Hours Before Convicts’ Hanging (The Print, 20-3-2020) <[Https://Theprint.In/India/Governance/Only-36-Of-Nirbhaya-Fund-Used-Since-2013-Panel-Tells-House-Hours-Before-Convicts-Hanging/384866/](https://Theprint.In/India/Governance/Only-36-Of-Nirbhaya-Fund-Used-Since-2013-Panel-Tells-House-Hours-Before-Convicts-Hanging/384866/) Retrieved From December 16, 2022

⁵⁰ Retrieved From [Https://Wcd.Nic.In/Sites/Default/Files/Approved%20framework%20for%20Nirbhaya%20Fund_0.Pdf](https://Wcd.Nic.In/Sites/Default/Files/Approved%20framework%20for%20Nirbhaya%20Fund_0.Pdf), Visited On December 16, 2022

Nirbhaya Fund are:⁵¹

- Introduction of SOS button in phones which would be used by the PCR (Police Control Room) to trace distress calls. Initiated by the Ministry of Home Affairs in consultation with the Ministry of Information Technology, it would be launched in 157 cities in two phases and has an expected outlay of Rs. 1000 crore.
- A pilot scheme of setting up an SOS alert system in trains in central and western zones through a railway helpline.
- Installation of CCTV cameras and GPS in public transport in 32 towns each with a population of over one million. The scheme proposed by the Ministry of Road Transport and Highways has a budget of Rs. 1700 crores.
- Setting up of nirbhaya centres near government hospital in every district as first point access for victims of sexual assault and domestic violence. The scheme is proposed by the Ministry of Women and Child Development with an expected budget of Rs 244 crores.
- Victim compensation fund for rehabilitation of victims of acid attacks.
- Programme named 'Shubh' for mapping vulnerabilities and identifying areas and categories of women who need special protection measures such as women in prostitution or widowed women

JUDICIAL APPROACH TOWARDS COMPENSATORY JURISPRUDENCE

The emergence of compensatory jurisprudence in the light of Human Rights philosophy is a positive signal indicating that the judiciary has undertaken the task of protecting the right to life and personal liberty of all the people irrespective of the absence of any express constitutional provision and of judicial precedents. Compensation to victims is thus a recognized principle of law being enforced through the Indian Courts.⁵² Article 32 of the Constitution of India confers power on the Supreme Court to issue directions or order or writ, including writs in the nature of habeas corpus, mandamus, prohibition, quo-warrantor and certiorari, whichever may be appropriate for the enforcement of any of the rights conferred by Part III of the Constitution.⁵³ The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III is "guaranteed", that is to say, the right to move the Supreme Court under Article 32 for the enforcement of any of the rights conferred by Part III of the Constitution is itself a fundamental right.⁵⁴ The Court is free to devise any procedure for the enforcement of fundamental right and it has the power to issue any process necessary in a given case. In view of this Constitutional provision, the Supreme Court may even give remedial assistance, which may include compensation in "appropriate cases."⁵⁵

The Code of Criminal Procedure, 1973 lays down provisions for victim compensation in section 357.

⁵¹ Ibid .

⁵² Bharat B.Das. *Victims In The Criminal Justice System*(New Delhi: APH Publication Corporation, 1997) 144.

⁵³ M. P. Singh (Ed.). *Constitution Of India* (Lucknow: Eastern Book Company, Lucknow, 2007) 282.

⁵⁴ M.P. Jain. *Indian Constitution Law*(Nagpur: Butterworth Lexis Nexis, 2014) 188

⁵⁵ Article 32(2), Part III , The Constitution Of India,1950

Section 357 is an effectual provision wherein subsections (1)(b) and (c) provide for apportioning compensation from fine imposed by the Court to the victim. Section 357(3) of the said Code provides unbound discretion to judges to balance the right of victims for compensation and save them from resorting to the cumbersome process of Civil Court as it does not put any limitation over the quantum of compensation. The plight of victim in criminal cases was highlighted in the report of Malimath Committee.

The Indian Constitution has several provisions which endorse the principle of victim compensation. The assemblage of clauses dealing with Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) laid the foundation for new social order in which justice, social and economic, would flower in the national life of the country.⁵⁶

The theory enshrined under Article 14 of the Constitution ensures “equal protection of Laws” that demands care and protection of victim by and within the Code of Criminal Procedure which till now may have tendency to protecting rights of offenders only. Fundamental right to life and personal liberty, enshrined in Article 21 of the Constitution is wide enough to include greater protection to the victims of crime and, as it insures human dignity to all, it must recognize rights of victim by providing them better care and protection as has been held in landmark cases like *Hussainara Khatoon v. State of Bihar*⁵⁷, *Joginder Singh v. State of Uttar Pradesh*, etc.⁵⁸

*Rudul Shah v. State of Bihar*⁵⁹, is the most celebrated case where the Hon’ble Supreme Court directed the State to pay compensation of Rs. 35,000 to Rudul Shah for violation of his fundamental rights. The decision in Rudal Shah’s case has been followed in series of pro-victim decisions wherein the compensatory jurisprudence culminated and kept blooming the concept of compensation related to Constitutional Injuries. Thus constitutional solution to fill the gap in the legal right to compensation in the monetary way for the abuse of the many human rights has been found by the Apex Court through its humane decisions. The Apex Court in the aforesaid case of *Rudul Shah v. State of Bihar*⁶⁰ for the first time laid down the principle that compensation can be given in the cases where any fundamental right of an individual has been injured and that the upper Courts have the authority to do so “through the exercise of writ jurisdiction and thereby evolved the principle of compensatory justice in the annals of Human rights jurisprudence.”

The decisions in *Nilabati Behera v. State of Orissa*⁶¹ and in *Chairman, Railway Board v. Chandrima Das*⁶² are illustrative of the new trend of using Constitutional jurisdiction to do justice to the victims of crime. Substantial monetary compensations have been awarded against the instrumentalities of the State for the failure to protect the rights of the victims. The jurisprudential reasoning behind the award of damages in cases of violations

⁵⁶ Article 38, The Constitution Of India, 1950

⁵⁷ AIR 1979 SC 1360

⁵⁸ AIR 1994 SC 1349

⁵⁹ (1983) 4SCC 141

⁶⁰ Ibid

⁶¹ (1993) 2 SCC 746

⁶² 2000 Cri.L.J. 1473 SC

of fundamental rights was elucidated in *Nilabati Behera v. State of Orissa*⁶³, which can truly be considered as a landmark case in the development of Law in this area. The Supreme Court laid down in lucid terms that Article 32 imposed obligation on the Court “to forge such new tools as may be necessary for doing complete justice and enforcing fundamental rights of the individuals having justice personality”

The fallout from the path-breaking judgment in *Vishaka v. State of Rajasthan*⁶⁴ helps to illustrate the situation of female victims. After police and medical personal prevented a social worker who was gang raped by upper caste individuals in a village in Rajasthan from registering her case and providing evidence, social activists and NGOs brought a writ petition seeking legal redress for the sexual harassment of working women and for realization of gender equality. The Supreme Court in this landmark judgment recognized sexual harassment of working women in workplace and outlined guidelines to prevent and redress complaints of such crimes.

The principle of payment of compensation to the victim of crime was evolved by Hon’ble Supreme Court on the ground that it is duty of the welfare State to protect the fundamental rights of the citizens not only against the actions of its agencies but is also responsible for hardships on the victims on the grounds of humanitarianism and obligation of social welfare duty to protect its subjects and give them equitable Justice etc. It can be said that judicial activism in the field of Article 21 of Constitution of India has expanded the concept of right to life and personal liberty. The Indian judiciary developed Compensatory Jurisprudence based on Article 21 and the principle of absolute liability. Compensation is indeed the best option available to the victims of economic offences.⁶⁵

*Baldev Singh v. State of Punjab*⁶⁶, 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 Cr.P.C. 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.

In the case of *P.Rathinam v. State of Gujarat*⁶⁷, the matter pertained to the rape of a tribal woman in the police custody, allegedly in the presence of her husband. A Commission was appointed by the Supreme Court to find out the true State of affairs, which opined that the incident of custodial rape was true. It had pointed out the officers who had committed the crime and also those who had been guilty of inaction and/or dereliction of duty in the matter. On the basis of the report of the Commission, departmental enquiries were commenced against various officers. Some of them had been concluded but most of them were still pending.

In the case of *Bodhisattwa Gautam v. Subhra Chakraborty*⁶⁸, the accused on a false promise of marriage cohabited with the victim and subsequently, falsely performed the marriage ceremony in front of family deity by applying vermilion on the complainant’s forehead. He even committed the offence of miscarriage as he forced

⁶³ (1993) 2 SCC 746

⁶⁴ AIR 1997 SC, 3011

⁶⁵ Ibid.

⁶⁶ AIR 1977 SC 1323

⁶⁷ 1994 SCC (Cri) 1163

⁶⁸ AIR 1996 SC 922

the victim to undergo abortion twice during the period. The act of exploitation committed by the accused on the victim was an example of extreme cruelty affecting the physical and mental health of the victim. The accused had committed offences under sections 312/420/493/496/498-A of IPC. The Apex Court in this case, compared the plight of the woman to that of a victim of rape, equating the condition of both the victims and observed that compensation to victim shall be justified in similar situations, even if the accused was not convicted. It emphasized on the right of the Court to award interim compensation.

In *Delhi Domestic Working Women's Forum v. Union of India and Others*⁶⁹ A Public Interest Litigation espousing the pathetic plight of four domestic servants who were raped in a moving train, the Apex Court, on October 19, 1994, highlighting ordeals of victims of rape and defects in the present Criminal Law system vis-à-vis victims of rape, outlined a set of broad parameters to assist them. Relying heavily upon Article 38(1) of the Constitution which directs the State, inter alia, to strive to promote the social order assuring socio-economic-political justice, and drawing inspiration from the Criminal Justice Act, 1991 of the United Kingdom, dealing with an institutionalized payment of compensation to the victims of crime including rape, stressed the need to set-up a Criminal Injuries Compensation Board (CICB) to compensate victims of rape. It also directed the National Commission for women to formulate such a scheme within six months from the date of judgment and the Union of India to protect fundamental rights.⁷⁰

*Laxmi v. Union of India*⁷¹ This case is related to the compensation to victims of acid attack and their rehabilitation under section 357-A of Cr.P.C. There are so many guidelines are given by the SC related to sale of acid in open market and compensation to the acid attack victims vis. Monitoring of case, Compensation to victim of acid attack - , hospitalizations, medical treatment expenses, quantum and manner of disbursement of compensation etc.

CONCLUSION AND SUGGESTIONS

In the current era of victimological studies, there is a substantial interest in the study of impact of crime on victims and ways to assist them. Assistance to victims of crime is of great significance because victims have suffered irreparable damages and harm as a result of crime.⁷² While the Criminal Procedure Code accepts the principle of victim compensation, in practice, the provision has remained merely on paper as is revealed in various judgments of our Supreme Court. The reluctance of judiciary to exercise its power may be due to many reasons, such as, the limited discretionary and circumscribed nature of this power, difficulty of recovery in majority of cases, lack of capacity of accused persons, lack of orientation for victim compensation in magistracy. A ray of hope has arisen in consequence of the incorporation of section 357-A on the recommendations of the

⁶⁹ (1995) 1 SCC 14

⁷⁰ Ibid

⁷¹ (2016) 3 SCC 669

⁷² Vidya Shankar, *Victimology In India: Need For Victim Oriented Laws*, International Journal Of Law Management & Humanities, Retrieved From <https://www.ijlmh.com/Wp-Content/Uploads/Victimology-In-India-Need-For-Victim-Oriented-Laws.Pdf> Visited On December 12, 2022

Committee on Reforms of Criminal Justice System headed by Justice V.S. Malimath. The Committee has emphasized the need for the paradigm shift in the justice system. There should also be a change in the focus from criminal justice to victim justice, but victim should be perceived as complementary and not contradictory to criminal justice.⁷³

Victims have few legal rights like right to be informed, right to be present and right to be heard within the Criminal Justice System. For the emancipation of victims rights it can be said that the Criminal Justice System can take several steps to ensure and strengthen the rights of the victims, for example; the victims should be informed about the progress of their case timely and they should be provided with opportunities to be heard as and when they want to give as input. The victim should be more than a witness, but not have total control over the prosecution of the case. The role that the victim plays in a criminal proceeding should be stronger than in the years prior to the victim's movement with an emphasis in sentencing. The victim and the Court should communicate frequently with the Courts giving victims specific explanations as to why an offender will be sentenced differently than the victim expects. This can give victims the personal gratification of being heard while balancing the power between the victim and the State. Victims should be heard in sentencing, feel satisfied, and be informed throughout case processing. It should not be forgotten that the victims are the persons who feel the immediate damage caused by the crime. The Courts should also seek victim's approval of the sentence with the goal of improving victim satisfaction with their involvement in the justice process. Seeking victim approval in sentencing is a justified way for the system to recognize that beyond the role of the State, which is impersonal, there is an individual who has personal interest in sentencing, was directly affected by the crime, and wants to be heard. They should also be adequately compensated and restituted. The criminal justice officials especially the police personnel should be given special knowledge and information on the rights of the victims in the Criminal Justice System. There should be a separate fund for victim's service and their rehabilitation. The entire criminal legal system functions primarily and substantially to provide justice to the victim. Giving the victims and witnesses and have their rights and interests protected is of utmost importance for the justice delivery system. Moreover, the present day understanding of justice necessarily includes accessibility to Courts of Law or else the judicial system would exist only in name and not in substance. Needless to say, victims and witnesses would be amenable to accessing the system and give truthful testimonies only if the system guaranteed a protection of their and their families privacy, security, identity and dignity.

The development of Compensatory Justice Jurisprudence in Indian Public Law is a significant contribution by the Supreme Court towards the development of Human Rights principles in the form of an unenumerated right under Article 21. This is an effective measure to keep the state on guard towards their duties. But at the same time, the principle of granting compensation should not be allowed to be whittled down and proper scrutiny of genuine cases needs to be done. Right of Compensation under Article 21 would serve as another candle in the life and liberty of common people of this country provided the said light is not blown away

⁷³ Vijay Kumar Singh, *Compensatory Justice Jurisprudence In Indian Public Law – An Analysis*, *NLUA Law And Policy Review Vol 3 No. II 2018*, Retrieved From https://Papers.Ssrn.Com/Sol3/Papers.Cfm?Abstract_Id=3507604 , Visited On December 16, 2022.

by the inadequacy in grant of compensation and actual enforcement of such compensation for the benefits of the victim.⁷⁴



⁷⁴ Vijay Kumar Singh, Compensatory Justice Jurisprudence In Indian Public Law – An Analysis, *NLUA Law And Policy Review Vol 3 No. II 2018*, Retrieved From https://Papers.Ssrn.Com/Sol3/Papers.Cfm?Abstract_Id=3507604 , Visited On December 16, 2022.