
JUSTICE TOWARDS VICTIMS OF CRIME: A COMPENSATORY APPROACH TO CRIMINAL JUSTICE SYSTEM

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ABSTRACT

The traditional criminal justice system has predominantly focused on the punishments of offenders rather than the rights of victims. Violence and criminality can exist anywhere in a society. As a result, there are two categories of people engaged in a crime i.e., the victim, against whom the particular crime is committed and the criminal, who actually committed the crime against the victim. The question, who bears the responsibility to rehabilitate victim's life has been extensively contested in victimology. Whether the State's obligation to the victim is limited to taking the steps like filing a complaint, conducting an investigation, opening a case and sending an accused to prison, or it extends beyond these actions. However, crime-victims, especially the victim's family, really hope that the state would identify and punish the guilty and simultaneously compensate the direct and indirect victim for their rehabilitation. Here, in this article the researcher, through a combination of doctrinal analysis and comparative study, makes an attempt to endeavour victim's right to compensation with respect to the liability of state to compensate victims in criminal justice system and also analyse the development and growth of compensation as criminal remedy internationally and in respect of India as well.

Keywords: Restorative Justice, victim, victimology, compensation, adversarial system of justice.

I. Introduction

In any nation, the primary goal of the criminal justice system is to safeguard both individual and governmental rights against wilful disregard of societal standards on the part of unscrupulous individuals. This goal is intended to be accomplished by ensuring that the accused is punished in conformity with the law, while also taking all necessary precautions to guarantee that the rights of the accused are protected. The criminal justice system is created to safeguard society from acts committed with malice and ulterior motives by penalising those who infringe the law and commit crime. If the accused is found guilty of a crime, they will be sentenced to a term of incarceration, which will be carried out with the aim of reformation and rehabilitation using all the resources and benevolence made available by the legal system and other state agencies. The entire judicial system seems to be more concerned with criminals and how to handle, deal with and rehabilitate them. It is conventionally accepted that sentencing of convicted criminals is the highest form of justice for society and victims. Even filing a criminal case in the police station can occasionally rely on the officer's good nature and raise issues regarding the victim's honour. The burden of proof always rests disproportionately on the shoulders of the victims, whereas the accused may be exonerated or spared punishment for a variety of reasons, such as the absence of any evidence linking the accused to the crime during the investigation or the lack of sufficient evidence at the trial to convict him. Unfortunately, it is repulsive to see that a little care the system shows for crime victims, who are the 'by products of the crime'. It is usually assumed that the victim's claims would be properly fulfilled after the criminal has been found guilty and punished. The truth, however, is far different. The victim is only taken into account as a source of material evidence in any criminal prosecution, and as such, he usually initiates the criminal procedure by reporting the offence to the police. But afterwards, the victim has no further role to perform. Even if it is determined to move further, he is typically harassed under the pretence of gathering sufficient information. His position becomes more precarious later in the trial stage when he is obliged to appear as a prosecution witness due to a number of circumstances including many adjournments, questioning by the prosecutor and the defence attorney, etc. Moreover as the victim is the material source of information, he has to identify the suspects who again put him at the risk of being intimidated by the accused or the suspects of the crime. His life and safety is put at peril. As a result, the victim of the criminal justice system not only feels defeated but also become a victim

of 'secondary victimisation'.¹ Because of this, contemporary victimologists believe that the conventional notion that the purpose of criminal justice is fulfilled upon an offender's conviction is absurd and is also unjust, unfair and inequitable. They contended that the protection of the life, limb and property of its citizens is the main duty of the state and when the state became failure to perform its duty, the crime-victim suffers the most. Hence, the state is required to ensure that the victim of a crime receives the same level of fairness and justice as the criminal. The fact that most countries' criminal justice systems now follow recent trends that emphasise a victim-centric approach to their criminal justice system is really comforting towards the goal of Restorative Justice. In fact, international human rights approach has seen a recent exponential growth of victim-related rules, indicating the important position they have considered in the existing crisis of victim's right to compensation in criminal justice system.

II. Rights of Victim

Depending on how heinous the crime was, its effects on the victims may last for lifetime. Crimes, particularly violent ones, can have a direct impact on the victim's physical health. The emotional strain that victims take in the aftermath of crimes can have an influence on one's health as well. Frequent reported effects to victims include loss of appetite, trouble sleeping, nervousness, anxiety and other similar issues. The victim's feeling of safety is also compromised, which can have an impact on their day-to-day activities and influence their behaviour, way of life and even where they live. The victims of crime also suffered financial consequences. The victims of heinous crime are often diagnosed with Post-traumatic stress disorder. The impacts of victimisation can continue an unlimited amount of time and affect not just the victims but also the victim's immediate family, next of kin, relatives, neighbours and friends. But, researches indicate that when victims are handled with respect and decency, it can enhance both their confidence and their experience in the wake of the crime. Thus, it is crucial to stop victimisation, acknowledge victim's status, provide them certain protections and benefits, and offer them various forms of support both during and after the criminal justice process.

¹ Dr. K. I. Vibhute, *Criminal Justice: A Human Rights Perspective of the Criminal Justice Process in India* (Eastern Book Company, 1st edn., 2004).

Some of the basic rights of a victim may include the following:

- i. Right to compensation
- ii. Right of participation and to be heard in criminal justice process
- iii. Right to be informed of proceedings
- iv. Right to restitution from the offenders
- v. Right of protection from intimidation and harassment

Now-a-days, restorative ways to resolving conflicts are shown to be more popular among victims than sanctions against the perpetrator. In the case of *Maru Ram v. Union of India*,² Justice Krishna Iyer observed, “...while the social responsibility of criminals to restore loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty.” Victims can be safeguarded by receiving compensation that aids in their continued rehabilitation. One of the fundamental rights of the victims is compensation. The perpetrator should provide restitution to the victim and if the offender is unable to do so, the state should make restitution as it was the state who failed to prevent the victim towards protecting the rights. The state is required to develop a mechanism to make sure that the victim’s right to be compensated for his harm is not disregarded or defeated if it fails to fulfil this obligation. Hence, it is the responsibility of the state to provide compensation which is very essential for the victim’s rehabilitation. However, the courts in India have limited themselves to an award of punishment only with no mention of victim’s compensation.

III. Position of victim in criminal justice system

The term victim is derived from the latin word ‘*victima*’ which literary means religious sacrifice of a person or animal. According to Principle A (1) of the UN Declaration of Basic Principles of Justice for Victims, 1985 ‘victim’ 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*

² (1981) 1 SCC 107.

that are in violation of criminal laws operative within the member states, including those laws proscribing criminal abuse of power.”³

Under Cr.P.C.(now B.N.S.S.), a victim would mean 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’ also includes his or her guardian or legal heir.⁴ However, from the analysis of this definitions we can divide victims into two categories. The first category of victims is the ‘direct victims’ and another one is ‘indirect victims’. Direct victims are particularly those persons who directly impacted by the crime or against whom the crime is committed. The other kind of victim is those persons who indirectly impacted through the crime. They are basically the persons whose lives are dependent on direct victims. They refer as ‘indirect victims’ of the crime. Further, Hans Von Hentig also provided a classification of victims i.e., ‘victim vulnerability’ and ‘victim culpability’. ‘Victim vulnerability’ refers to a group’s susceptibility to victimization, through no fault of their own but as a result of certain demographics or other traits (for example, children, elders, or women), as these people are more susceptible to becoming victims. Victim culpability describes victim behaviour that may either encourage or trigger victimization.

Only in 1960s, the victimology movement catch off the need for victim-orientation laws. The victim-orientation system includes provisions for greater victim choice in the trial and disposition of the accused, greater respect and consideration for victims and their rights in the investigative and prosecution process and a scheme of reparation or compensation specifically for victims of crime. Victims are currently handled in India like simple evidence for the prosecution. The victim has no legal protection for their interests during judicial procedures but the accused has a number of rights. Later on, Benjamin Mendelsohn proposed a new strategy called ‘General Victimology’ to encompass a wide range of victims because he believed that focusing solely on criminal victimization under the umbrella of victimology is an overly restricted viewpoint. Victimology is the practical, fact-based study of victims and it is concerned with all victims and all facets of abuse that society is interested. Offenders getting more security and benefits in the criminal justice system sparked this movement. There are three factors with the demand for more comprehensive victim rights like;

³ UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, GA Res 40/34 (November 29, 1985).

⁴ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 2(wa).

- a) Offering victims' services and initiatives (victim's rehabilitation program, compensation program) supported by the government.
- b) The victim's right to information about and involvement in the criminal justice system.
- c) The protection of victims of crime, both current and potential.

The First International Symposium on Victims, 1973 held in Jerusalem declared that the modern laws were tougher on victims than on offenders in regards to the payment of compensation to victims and those victims should be adequately equipped with modern laws to obtain indemnity from offenders. Procedural reforms were also recommended. In addition to paying for the offender's sentence, the victim of crime wishes to get financial compensation for any bodily or property losses. For the perpetrator, justice must be reformatory, and for the victim, it must be rehabilitative. Thus, there is a reasonable expectation that the victim will be provided with rehabilitative services, including monetary compensation.⁵ Insofar as the victim of crime is concerned, his involvement in the criminal justice system is restricted to that of an informant. The victim's part is selected by the police because the investigation is solely their responsibility. Even if the police decide to proceed, the victim will be harassed while information is being gathered.

IV. Historical analysis of compensation as criminal remedy

Restitution has been adopted as a legal remedy throughout the history. Civil and criminal law were never separated in prehistoric societies. Instead, the offender was required to pay compensation to the victim or his family for any harm caused by the offence. However, the main objective of such restitution was misplaced since it was meant to prevent the offender from taking retribution on the victim or the community rather than to compensate the victim.⁶ It was a deal that the offender might take into account in order to 'buy back' the peace that he had disrupted. But, over time, these principles reduced the severity of punishments for criminal offences and civil wrongs. Being a victim's right rather than a criminal law remedy, compensation has now been incorporated into civil law. As a result, criminal law no longer required victims to be compensated in order to receive rehabilitation. The legal position was

⁵ S. S. Mallick, Compensation to victims under Indian Criminal Justice System, *available at*: <https://articles.manupatra.com> (last visited on February 2, 2023).

⁶ *Dilip S. Dhanukar v. Kotak Mahindra Co. Ltd and Anr.* (2007).

that, rather than providing for the victim's rehabilitation, criminal justice was either reformatory or retributive for the purpose of the offender. This conventional belief, however, has lately undergone a considerable change as people all over the world have come to believe that courts and legislators are neglecting the victims of crime. However, a system that relies on the offender making reparations to the victim is extremely challenging. This is because finding and convicting the culprit is really necessary. In addition, the victim must have the financial means to pay for the criminal prosecution. Such a tactic increases the possibility that the victim would be refused such compensation since the offender is a debtor and cannot acquire money while incarcerated.

Consequently, it seems that creating a State Fund from which victims may be compensated will be a prompt reimbursement immediately after the commission of crime. The court may order the criminal to pay back the State a certain sum if he is found guilty of the particular offence.⁷ It should be ensured that the victim is not affected by the offender's inability to pay, prolonged criminal proceedings or an acquittal owing to a lack of evidence. Various nations, including Canada, Australia, England, New Zealand, Northern Ireland and the United States have passed laws mandating reparation by the courts administering criminal justice.

V. International perspective of victim's compensation

The idea and concept of 'justice to victims' was not a prominent concern throughout the early stages of the creation of International Criminal Law. Instead, it was restricted to social justice and punishment of the accused. Thus, the field of public international law that deals with the rights of the victims is relatively new and constantly developing. Numerous tribunals and international criminal courts that have been established since Nuremberg, including the Special Court for Sierra Leone and the ad hoc Criminal Tribunals for the former Yugoslavia and Rwanda, have limited the space for victim's active engagement with these institutions beyond the role of prosecution witness.

Among the UN initiatives, right to compensation to the victims as a criminal remedy is recognised in the Universal Declaration of Human Rights which provides that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law.⁸ The UN General Assembly

⁷ *People v. Becker* (1957).

⁸ Universal Declaration of Human Rights, 1948, art. 8.

passed the Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, considering the victims to be the essential stakeholder in the criminal justice process. The Declaration establishes fundamental guidelines for victims' rights including fair treatment, consideration of their opinions during the criminal justice process, restoration and compensation. In the Declaration, victimhood was reconceived as encompassing both instances of victimization by the state and by private persons.⁹ Theo Van Boven's Report¹⁰ and Cherif Bassiouni's Report¹¹ to the commission on human rights both contributed to the further development of the provisions of the Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power. In Cherif Bassiouni's report it was noted to provide victims appropriate legislative and administrative measures to prevent violations, to investigate violations and to take action against perpetrator, to provide victims with equal and effective access to justice, to afford appropriate remedies and also to facilitate reparations. These studies emphasised the relationship between the right to reparation and the prevention of violations of human rights the significance of pursuing compensation from the offender and the necessity for the government to take action to stop further violations. As a result of these reports, the UN general assembly approved the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross International Human Rights Violations and Serious violations of International Humanitarian Law in the year 2005. In addition to these mechanisms that are particular to victims, several other international agreements also demand that the interests of victims be taken into consideration in various ways. They include the Vienna Declaration on Crime and Justice, the UN Convention against Transnational Organized Crime, the Standard Minimum Rules for Non-Custodial Measures and the Basic Principles for the Treatment of Prisoners. So, it may be said that the UN's current efforts are consistent with emphasising victim's rights, particularly the right to compensation.

Under the International Criminal Law, the Rome statute of the International Criminal Court provides a plethora of safeguards on which victims can rely when serving as witnesses. It also grants victims the ability to voice their opinions and concerns at specific points in the proceedings. Effective compensation provisions are also included in this statute. According to the statute, the court can order restitution, damages and reparations directly from the convicted

⁹ *Supra* note 3 at 5.

¹⁰ Theo Van Boven, "final report on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms" (July, 1993).

¹¹ M. Cherif Bassiouni, "final report on the Establishment of an International Criminal Court for the Implementation of the Apartheid Convention and other Relevant International Instruments" (2000).

party.¹² The court may also order reparations made available to the victims through the establishment of the Trust Fund for Victims.¹³ In the rules of evidence and procedures for the tribunals of the former Yugoslavia and Rwanda, the UN has developed victim-sensitive rules. The statutes of both courts acknowledge a connection between the accused's right to a fair trial and the requirement to safeguard witnesses and victims. However, compared to the ICC statute, the ICTY¹⁴ and ICTR¹⁵ reparation mechanisms are less effective. They do, however, also include clauses that address restitution for crime victims. Hence, it is clear that the rapidly expanding corpus of international criminal law pays attention to victim interests, including their entitlement to compensation.

Standards for victim's rights have been established at the European level by both the European Union and the Council of Europe. The European Convention on the Compensation of Victims of Violent Crimes, established by the Council of Europe in 1983, that sets the minimum requirements for the payment of governmental compensation to crime victims.¹⁶ The Convention also provides that compensation shall cover, according to the case under consideration, at least the following items: loss of earnings, medical and hospitalisation expenses and funeral expenses and as regards the dependents of victims (indirect-victim), loss of maintenance.¹⁷ Crime victims in the European Union: Reflections on the Standards and Action, 1999 was a communication made from the commission to the European Parliament that featured seventeen recommendations arranged under five key headings. These are as follows:¹⁸

- **Prevention of Victimization**

One of the main ways of preventing victimization is to make information circulate, especially at points throughout the transport infrastructure network (airports, stations, underground stations, etc.). Some EU countries have set up special services for foreign crime victims. In

¹² Rome Statute of the International Criminal Court, 1998, art. 75.

¹³ Rome Statute of the International Criminal Court, 1998, art. 79.

¹⁴ The International Criminal Tribunal for the Former Yugoslavia, 1993.

¹⁵ International Criminal Tribunal for Rwanda, 1994.

¹⁶ European Convention on the Compensation of Victims of Violent Crimes, 1983, art. 2.

¹⁷ European Convention on the Compensation of Victims of Violent Crimes, 1983, art. 4.

¹⁸ The Rights of crime Victims, *available at*: <https://eur-lex.europa.eu/EN/legal-content/summary/the-rights-of-crime-victims.html> (last visited on March 3, 2023).

general, the Commission is advocating the exchange of best practices between EU countries and the development of appropriate training for staff.

- **Assistance to Victims**

Most EU countries have services offering some kind of first aid to crime victims. However, travellers may need a broader range of assistance than locals (e.g. language, social and psychological support). Assistance is provided by the police, social services or NGOs. Europe-wide cooperation has increased through associations, and the European Forum for Victims' Services has formulated guidelines on victims' rights. The police play an important role as they are often the first contact for victims. However, language and lack of information may present problems for victims, especially if they wish to lodge a complaint or obtain additional assistance. The Commission suggests introducing minimum standards for the reception of victims so that they can obtain the information and, if necessary, the assistance they need. This could be done by setting up a network of EU assistance services to deal with language, information and training problems, which are often related.

- **Standings of Victims in Criminal Procedure**

It is difficult for foreign victims to follow proceedings concerning them at a distance. There are a number of solutions that should be adopted generally, such as fast-track procedures and the acceptance of statements submitted in advance or from abroad. In general, victims should be able to receive appropriate assistance so that they can follow the progress of the case, be treated with consideration and have the right to protection of their private life. Swifter procedures for the restitution of stolen property should be introduced. In certain cases, the development of mediation systems could speed up the process and improve the handling of complaints.

- **Compensation Issues**

This aspect will be looked at in the context of the implementation of the action plan on freedom, security and justice. To reduce disparities between EU countries, the Commission is proposing that they ratify the 1983 European Convention on the Compensation of Victims of Violent Crimes (Council of Europe) and examine ways of speeding up compensation. Other measures could also be adopted to help victims obtain compensation and to develop cooperation between

EU countries with a view to facilitating claims procedures.

- **General Issues**

The communication asserts that victims are faced with inter-related problems at every stage: information, training of staff with whom they come into contact and language. The Commission would like to conduct a survey among travellers who have been victims of crime to highlight potential problems, develop training for the staff concerned and exchange good practices. Lastly, it is planning to provide multilingual information for crime victims on its website.

Further, the Framework Decision on the Standing of Victims in Criminal Proceedings was adopted in 2001 by the Justice and Home Affairs Council after the recommendations were approved by the Parliament. All of the rights listed in the framework decision, in contrast to other international norms, are legally enforceable and immediately applicable inside the national legal system. However, it is also clear that victim's rights have gained significant relevance at European level. So, it may be said that victim's rights have recently become the spot light in the discourse of criminal justice and international human rights. Therefore, victim's rights to protection, which include protection from becoming a victim and protection from secondary victimisation, are recognised in international human rights documents. Even, victim's rights to justice and fair treatment, which include rights to remedy, participation, and reparation, are also recognised. It is gratifying to see that all of these international documents demonstrate consensus on the victim's entitlement to compensation.

VI. Indian perspective of victim's compensation

The public interest in the prosecution and conviction of the criminal takes precedence above victim's rights in India as we have an adversarial system of justice in which the state and the accused compete with each other. The criminal justice system in the nation prioritises the rights of the accused to a fair trial, therefore the victims do not receive the due attention, they deserve. It is only studies from the late 1970s; scholars begin to pay attention to victim's rights in India. A Bill on victim assistance was developed in 1996 as a result of initiatives taken by the University of Madras in the early 1980s which resulted in the establishment of the Indian Society of Victimology. A significant turning point for the right of victims to compensation occurred in 2003 with the recommendations of the Malimath Committee on Reforms of

Criminal Justice System, in addition to various recommendations of law commissions and the National Commission to Review the Working of the Constitution. The group advocated for providing victims of crime with 'holistic justice' by granting them the legal right to seek compensation for their losses or injuries during criminal proceedings.

In the same way, article 41 of Indian Constitution provides that the state shall make effective provisions for 'securing public assistance in cases of disablement' and other cases of 'undeserved want' could be surely interpreted to include victims of crime. Therefore, the state is obliged to provide public assistance to victims by means of compensation despite guaranteeing other rights to victims. Although these directive principles cannot be enforceable in court, they nonetheless place a duty on the government to act favourably for the welfare of the public. Furthermore, a large number of the Directives have been raised by court rulings to the level of Fundamental Rights. In addition to this, every Indian citizen has a fundamental duty to 'develop humanism' and have 'compassion for living creatures,' as stated in Article 51-A of the Indian Constitution. These provisions might likewise be creatively construed to cover crime victims.

There are a few statutory provisions that can be used to provide victims of crime with compensation. The Code of Criminal Procedure, 1973 is the primary legislation in India that addresses victim compensation. The Code identifies a victim and offers compensation to the crime victims. The most significant clause that addresses giving compensation to crime victims is section 357.¹⁹ In order to save time and money by not going to two different courts for the same issue, this provision merges the criminal and civil legal proceedings. In actuality, there were provisions for offering compensation to crime victims and the scheme of such compensation in the Criminal Procedure Code.²⁰ In its 41st report, the Law Commission of India observed that our courts are not using their legislative authority to grant compensation and proposed that compensation should be included as a punishment in the criminal law.²¹ As a result, Sec 357 was added to the previous code to replace the provision in accordance with the forty-first Report's recommendation of the Law Commission. The clause states that the victim may get compensation from all or a portion of the fine that is recovered from the perpetrator when the court sentences the defendant to a fine or any other penalty, including a

¹⁹ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 357.

²⁰ The Code of Criminal Procedure, 1973 (Act 2 of 1974), ss. 357, 357A.

²¹ Law Commission of India, "41st Report on The Code of Criminal Procedure, 1898" (1969).

death-sentence that includes compensation as a part of the sentence. If the court determines that the victim is entitled to compensation for the loss or harm brought on by the offence, compensation may be awarded. Section 357 A was included as part of the Criminal Procedure Code (Amendment Act) of 2008, which clearly recognised the entitlement to compensation for victims. The aforementioned clause addresses the victim compensation programme. According to the provision, each state government must create a plan for allocating funds to compensate crime victims and their dependents who need rehabilitation and have incurred loss or harm as a result of the crime, after consulting with the central government. The trial court may propose compensation in two circumstances after the trial. First, for rehabilitation if it determines that the compensation granted under section 357 is insufficient. Second, if the offender is found not guilty or is released from custody, the victim must undergo rehabilitation. The state or the District Legal Service Authority, depending on the situation, decides the amount of compensation to be granted under the compensation programme once the court recommends compensation. If the criminal cannot be located or recognised and no trial is held, the victim or his dependents may also file a claim for compensation with the state or the district legal service authorities. After conducting an investigation within two months of receiving the suggestion or application, the district or state legal service authority may grant adequate compensation. The district or the State Legal Service authority may order that an immediate first aid facility or medical benefits be made available without charge, or that any other interim relief be provided as it deems appropriate, in order to reduce the victim's suffering, upon certification from the police officer or jurisdictional magistrate. As a result, this clause is in line with international human rights treaties that grant victim's rights to rehabilitation. Any compensation amount that the judge awards are recoverable just like fine.²² The amount of the punishment may be collected through the attachment and sale of the offender's moveable property and immovable property.

Additionally, several Law Commission reports have advocated for victim compensation scheme. A victim-oriented approach to the criminal justice system as well as a victim compensation programme have been suggested by the National Commission to review the working of the Constitution (NCRWC). The Commission to review the working of the Constitution has advocated a victim-orientation to criminal justice administration, with greater respect and consideration towards victims and their rights in the investigative and prosecution

²² The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 431.

processes, provision for greater choices to victims in trial and disposition of the accused and a scheme of compensation particularly for victims of violent crimes.

Malimath Committee also made suggestions regarding victim's rights. In addition to many positive suggestions for victim rights, the committee made a strong case for separate victim compensation legislation by parliament that should establish a victim compensation fund. The committee recommended that the legislation include a scale of compensation for various offences in order to guide the court. The circumstances under which the compensation may be awarded or withheld must also be specified by legislation.

The Code of Criminal Procedure (Amendment) Act, 2008, made a significant effort to fixing the legal gaps regarding victim's rights like counsel of victim,²³ right to appeal²⁴ including different victim and witness protection programmes, particularly in case of rape and the Act also provides for Victim Compensation Scheme.²⁵ Apart from this, there are also other legislations like Domestic Violence Act²⁶ provides for monetary relief, Indian Penal Code²⁷ provides for fine paid to the victim acid attack to meet medical expenses, Motor Vehicles Act²⁸ also imposes liability to pay compensation in certain cases on the principle of no fault.

However, the judiciary has also put emphasis on the need of a comprehensive legislation for victim's right to compensation through several pronouncements. Looking through the precedents, it reveals that the judiciary's prior tendency regarding the awarding of compensation under Sec. 357 of Cr.P.C. (now Sec.395 of B.N.S.S.) was not particularly optimistic. In *Palaniappa Gounder v. State of Tamil Nadu and Others*,²⁹ the Supreme Court examining the validity of Sec. 357 held that awarding fine together with death penalty would not serve any social purpose. Adversely, a different trend of judiciary became evident in *Hari Singh v. Sukhbir Singh*.³⁰ In this case the Apex Court ruled that the judges' ability to grant compensation under Section 357 Cr.P.C. (now Sec.395 of B.N.S.S.) is not ancillary to other sentences but rather in addition to them to reassure the victim that he is not an overlooked person in the criminal justice system. The court further ruled that any compensation paid out

²³ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 24(8), proviso.

²⁴ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 372, proviso.

²⁵ The Code of Criminal procedure, 1973 (Act 2 of 1974), s. 357A.

²⁶ The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), s.20.

²⁷ The Indian Penal Code, 1860 (Act 45 of 1860), s. 326A.

²⁸ The Motor Vehicle Act, 1988 (Act 59 of 1988), s. 140.

²⁹ A.I.R. 1977, SC 1323.

³⁰ A.I.R. 1988, SC 2127.

in accordance with this clause must be fair. The details and circumstances of each case, such as the type of crime, the accused's financial capacity, the legitimacy of the victim's claims, etc., will determine the reasonableness of compensation. Additionally, the court suggested that in order to achieve the goals of justice, all courts should use this power liberally. In, *Suresh v. State of Haryana*³¹ the Supreme Court regretted the fact that courts were still not often awarding interim compensation though it had been a number of years since section 357A of Cr.P.C. (now Sec.396 of B.N.S.S.) was established. Hence, it is evident that the Supreme Court is making every effort to effectively enforce the beneficial laws regarding victim compensation. Without a doubt, if the Supreme Court's instructions are strictly observed, the victim's body and soul, as well as those of his dependents, may find some relief.

VII. Need for compensation to the victims as criminal remedy

Victim retaliation and individual compensation served as the social control in prehistoric cultures. Indeed, this was done before there was a conceptual distinction between criminal and civil law. The criminal was compelled to pay back the victim's or his family's losses that were brought on by the crime he committed. A distinction between civil and criminal law later developed as society grew more complicated and the state had a dominating role in the investigation and punishment of crimes. The victim's right to compensation was also introduced into civil law at this time. Recently, it has been seen that the decision-makers in the criminal justice system throughout the world are placing a strong emphasis on delivering justice to the victim and creating plans for his payment of compensation. It is also maintained that every crime shows the state's inability to protect its citizens, and as a result, it is the state's responsibility to make up for any harm done to the victim. Moreover, when a crime has been committed, the victim has a right to justice and an opportunity to be compensated for the harm that was caused. Emphasising the importance of victim's right to compensation, the Supreme Court observed, "*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 the case of death and other bodily injury. This is apart from factors like loss of reputation, humiliation etc. An honour which is lost or life which is snuffed out cannot be recompensed but the monetary compensation will at least provide some solace.*"

³¹ 2015 Cr. L.J. 661.

Consequently, it can be said that the need of providing compensation to the victim is to lessen their pain, make it easier for the victim and his family to cope with the loss, rehumanise and restore their dignity.

VIII. Conclusion and Suggestions

To conform to universal standards, the present legal system has to be modernised. In order to change the compensation scheme into a more inclusive and victim-empowering process, it must also involve and incorporate victims, both as participants and for the purpose of making suggestions. We should make a clear distinction and understand the difference between these two phrases “criminal justice” and “criminal’s justice”. Because it is not the system where we are concerned only with the criminal’s justice” in a particular crime rather, “criminal justice” system where victim’s right is given more emphasis to meet the ends of justice. Thus, it is urgently necessary to simplify the criminal justice system by incorporating victim’s right, particularly the right to compensation. It should be immediately made available to the victim to provide some solace regardless of whether the accused is found guilty, captured, or whether the trial has started or not.

To meet the drawbacks of victim’s right to compensation at all level, the following suggestions have been proposed by the researcher:

- i. A separate ‘Victim Compensation Fund’ should be created with strict implementation guidelines internationally and nationally to provide adequate compensation to the victims of crime. Specially, in India such compensation fund should be made available by every state to provide immediate relief to the victim and the dependants of victims (indirect victims) irrespective of the socio-economic status of the offender as ultimately state is guardian-protector of our fundamental rights. In case of commission of every crime it’s also a failure on the part of state to protect those rights. Hence, it imposes an obligation on the part of the state also to rehabilitate the victims through compensation.
- ii. A comprehensive legislation should be enacted at all levels with the very objective to secure victim’s right with special reference to compensation.
- iii. A liberal interpretation of several provisions of part IV of the Indian

Constitution potentially encompasses victims of crime and provides them the right to compensation. According to Article 38(1), the state must work to further the welfare of the people by preserving and defending the social structure in which all facets of national life (social, economic, and political) are reflected. This provision of directive principle would also include the victim's right to compensation, if interpreted creatively.

- iv. Though the compensation scheme is incorporated in the criminal procedure, award of compensation still not become a rule. There is a huge need to introduce effective rules for the proper implementation of compensation scheme under section 375A of Cr.P.C. (now Sec.396 of B.N.S.S.).
- v. Taking into consideration the 'legislative intention' it is suggested that the word 'may' used under section 357 should be replaced with 'shall' so that there would be a mandatory obligation on the part of the court administering criminal justice to pay compensation to the victims.
- vi. Administrative mechanism should be strengthened in order to provide redress through procedures that are expeditious, fair, inexpensive and accessible which the current system is unable to provide.