

RIGHT TO COMPENSATION OF VICTIMS OF CRIME IN INDIA: NEED FOR A COMPREHENSIVE LEGISLATION

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Introduction:

The main objective of criminal justice system in any country is to protect the rights of the individual and the state against intentional infringement of the basic norms of the society by unscrupulous persons. This objective is sought to be achieved by ensuring that the accused is punished in accordance with law, in the process of which every measure is taken to ensure that the rights of the accused is safeguarded. However it is disgusting to note that the system do not give much similar concern for the victims of crime, who are the “bye products of the crime”.⁹⁴It is always presumed that when the offender is convicted and punished, the victim’s claims are sufficiently satisfied. However the reality is far from true. In any criminal case, the victim is considered only as an informant for the material source of evidence and in most cases, as an informant, he sets the criminal process in motion by reporting the crime to the police. But after that he has no further role to play unless the police⁹⁵ consider it necessary. Even if it is decided to proceed, in most cases he is harassed under the guise of collecting adequate information.⁹⁶ Later in the trial stage, where he is required to participate as a prosecution witness, his position becomes more vulnerable because of several factors like frequent adjournments, indifferent attitudes of judges, questioning by prosecutor and the defence lawyer etc. Moreover as he is the material source of information, he has to identify the suspects which again put him at the risk of being intimidated by the accused/suspects. His life and safety is put at peril. Thus victim in the criminal justice system feels not only dejected but becomes a victim of “secondary victimisation” by the criminal justice system.⁹⁷ Hence modern victimologists argue that the traditional presumption that victim’s justice is satisfied on the conviction of the offender is farce and it is unjust, unfair and inequitable.⁹⁸They argue that the state’s primary responsibility is to protect the life, limb and property of its subjects and the crime victim suffers because of

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⁹⁴ KD Gaur, *Justice to victims of crime: A human rights approach*, in Criminal justice: A Human rights perspective of the criminal justice process in India 350, (, KI Vibhute ed , 2004)

⁹⁵ Police has exclusive domain regarding investigation of his complaint

⁹⁶ It is lamentable that in most cases, he is treated like an accused.

⁹⁷ For detailed discussion, see KI Vibhute, *Justice to victims of crime: A human rights approach*, in Criminal justice: A Human rights perspective of the criminal justice process in India 370-395, (, KI Vibhute ed , 2004)

⁹⁸ *Ibid*

state's failure in protecting his life, limb and property.⁹⁹ Hence State has an obligation to ensure equal fairness and justness to the crime victim as that of the offender.¹⁰⁰ It is really a matter of solace that the recent trends of criminal justice policy in most countries exhibit a victim centric perspective in their criminal justice.¹⁰¹ In fact in recent times, there is an exponential expansion in victim related norms in international human rights law which points to the prominent position they have assumed in the present scenario. Though there are some debates as to victim's participatory rights in trials and sentencing procedures, there is wide consensus as to their protective rights and reparative rights. Victim's compensatory rights have assumed maximum prominence in the modern criminal justice system that almost all the developed countries have comprehensive legislation in this area. In this article, an attempt has been made to analyze how far right to compensation of victims of crime is materialised in India in the light of legislative provisions and precedents.

1. Victim of crime: conceptual analysis

The legal definition of victim includes a person who has suffered direct or threatened physical, emotional or pecuniary harm as a result of the commission of crime; or in the case of victim being an institutional entity, any of the harms by an individual or authorised representative of another entity.¹⁰² Thus victim of crime refers to any person, group or entity who has suffered injury, or loss due to illegal activity and the harm may be physical mental or economic.¹⁰³

As per UN Declaration of Basic principles of justice for victims, 1985 Victim is defined as "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within the

⁹⁹ The argument can be summarised as follows: 1. If the state lays down the rules of behaviour, it should not only punish the violations thereof but also look after the persons who suffer by the evolution of such rules 2. If the state prohibits all private vengeance, it should go to the rescue of the victim of crime, the perpetration of which it failed to prevent, 3. If the state introduces new reformatory measures for rehabilitating offenders, it should also shoulder the responsibility of compensating the victims of crime. 4. If the state reduces the offenders means by fixing him or sending him to prison where his earnings are minimum, it should make good the resultant decreases in the victim's compensation in offences which are not punishable by restitution- see for details. For detailed discussion see *Supra* note 4.

¹⁰⁰ *Supra* note 4.

¹⁰¹ In most world countries two movements are dominating the criminal justice policy- towards greater penal severity and towards integrating a victim's perspective. In some countries like USA these 2 movements go hand in hand. Where as in countries like England and Wales, the two movements operate simultaneously, in separate spheres and in apparent contradiction.- For detailed discussion see Andrew Ashworth, victims rights, defendants rights and criminal procedure in Integrating a victim perspective within criminal justice: International debates 185-202 (Crawford and Goody ed., 2000)

¹⁰² cf Dr Krishna Pal Malik, Penology, victimology and correctional administration in India, 213(2012), see also Rabintra K Mohanty & Satyajit Mohanty, Text Book of criminology, penology and victimology, 441(2012).

¹⁰³ cf Dr Krishna Pal Malik, Penology, victimology and correctional administration in India, 213 (2012)

member states, including those laws proscribing criminal abuse of power.”¹⁰⁴ Thus any person who has suffered harm because of violation of criminal law is a victim. Harm may be physical, mental, economic or emotional in nature. The definition seems wide enough to include both natural and artificial persons, individual and collective groups and also the dependants of the victim. The Basic principles also stipulate that a person will be considered as victim even if the offender is not identified, apprehended or prosecuted.¹⁰⁵ Term victim also includes persons who have suffered harm as a result of assisting victims in distress or to prevent victimisation.¹⁰⁶ The definition of victim in other international Human rights instruments are also in similar lines.¹⁰⁷

As per Code of criminal procedure, victim means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression includes guardians and legal heir of the victim.¹⁰⁸ This definition which was incorporated by the 2008 criminal procedure (Amendment) Act, 2008, is a step in positive direction. However the term “for which the accused is charged” shows the restrictive nature of this definition. The definition is narrow when compared to the definitions provided in other International human rights instruments.

Moreover for every crime that is committed, there are at least two victims. One is the public/society, who suffers due to the violation of criminal law and the other, is actual individual who has suffered injury to person, property or reputation.¹⁰⁹

2. Need for victim compensation:

In ancient societies, the social control was victim retaliation and personal reparation.¹¹⁰ This was actually before the conceptual separation between civil and criminal law. The offender

¹⁰⁴ Principle A.1.

¹⁰⁵ Principle A2

¹⁰⁶ Principle A2

¹⁰⁷ See United Nations Convention against Torture, Principle 8 of Basic Principles and guidelines on the right to remedy and reparation, 2006, etc.

¹⁰⁸ Sec 2(wa) inserted by The code of criminal procedure (Amendment) Act, 2008.

¹⁰⁹ As far as the society or the public is concerned the crime is regarded essentially as the disturbance to the “equilibrium of the social order” and hence takes up the responsibility of restoring the peace and harmony by punishing the criminal. The second victim, the ‘principle affected’ in terms of loss of life, limb, property etc is relegated to the secondary status in the criminal justice process.

¹¹⁰ Mohammad farajiha Ghazvini, police protection to victims of crime, 1,(2002)

was required to reimburse the victim or his family for the loss he has caused as a result of crime.¹¹¹ Later as society became more complex with state assuming dominant role in the investigation and prosecution of offences, a division between civil and criminal law emerged and victim's right to compensation was incorporated into civil law.¹¹² This was the position till recently. However recent trend shows that policy makers of criminal justice system all over the world are stressing upon providing justice to the victim and also to develop schemes of the payment of compensation to him.¹¹³ It is also argued that every crime depicts failure of the part of the state to protect its subject and hence it has to compensate him when he suffers as a result of the crime. Moreover, once crime is committed, the victim has the right to get justice and remedy the harm which he has suffered as a result of crime. This right is different from and independent of the right to retribution and responsibility of the state governed by rule of law.¹¹⁴ But if state fails to discharge this responsibility, it must still provide a mechanism by which it is to ensure that Victims right to compensation for injury is not lost.¹¹⁵ As observed by the Hon'ble Supreme Court in *Maru Ram v. Union of India*¹¹⁶, stressing the importance of victim's right to compensation;

“ ... 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 then *monetary compensation will at least provide some solace.*”

Thus it can be stated that object of granting compensation to the victim is to alleviate the sufferings of the victim, to make the loss easier to bear for the victim and his family, re humanise victims and restore their dignity.¹¹⁷ It also has its object to encourage the victim to report the crime and cooperate with the criminal justice system

3. International initiatives:

¹¹¹ The offender offers blood money to the victim. If it is accepted the life of the offender is saved.

¹¹² *Suresh v. State of Haryana* 2015 Cri 1 j 665

¹¹³ Rabindra Mohanty & satyajit Mohanty, Text book of criminology, penology and victimology, 454 (2012) .

¹¹⁴ *Suresh v. State of Haryana* 2015 Cri. L. J. 661-675 at 670

¹¹⁵ *Suresh v. State of Haryana* 2015 Cri. L. J. 661-675 at 670

¹¹⁶ AIR 1980 SC 2147

¹¹⁷ Jonathan Doak, victims rights, Human rights and criminal justice: Reconceiving the right of third parties, 207 (2008)

3.1. UN Initiatives

Right to compensation is recognised in UDHR¹¹⁸ and International covenant on civil and political Rights.¹¹⁹ Considering victim as the key player in the criminal justice process, UN general assembly passed The UN Declaration on the Basic principles of justice for victims of crime and abuse of power in 1985.¹²⁰ The Declaration lays down basic standards for the fair treatment of victims, consideration of their views in the criminal justice process, restitution and compensation.¹²¹ The Declaration reconceptualised victimhood as a notion inclusive of those who had been victimised by the state as well as by private individuals. The declaration also defines crime prevention as a victim's rights issue and guarantees victims access to justice and fair treatment, right to information, assistance, and access to informal dispute resolution methods.¹²² The provisions of this instrument were further developed by two UN reports, Theo Van Boven's 1993 report¹²³ and Cherif Bassiouni report¹²⁴ to the commission on human rights. These reports highlighted the link between the right to reparation and prevention of human rights violations and emphasised the importance of seeking redress from the perpetrator and the need for measures by the state to prevent future violations.¹²⁵ The reports culminated in the

¹¹⁸ Art 8, which provides that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

¹¹⁹ Art 2 clause 3. Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted. Art 9 5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

¹²⁰ UN Basic principles was premised on the recommendations of the VI UN Congress on the prevention of crime and treatment of offenders. The principles urged the member states to treat victims with compassion and respect and also urged to resort to appropriate measures at international, regional and national levels to improve their access to justice and fair treatment, restitution, compensation and assistance. Regarding compensation, it is provided that if compensation could not fully available from the offender or other sources, it should be provided by the state. Cf see KI Vibhute, *Justice to victims of crime: A human rights approach*, in *Criminal justice: A Human rights perspective of the criminal justice process in India* 373 (KI Vibhute ed., 2004)

¹²¹ The international standards expected of the countries in the treatment of victims by the CJS agencies at different stages of the criminal process have been elaborately detailed in the UN Handbook on Justice for Victims.¹²¹ Thus a 'victim oriented restorative justice paradigm' was designed to assist the UN members to redesign their respective criminal justice system for rendering justice to victims.

¹²² *Supra* note 24 at p31

¹²³ *Ibid.* It was on the 'right to restitution, compensation and rehabilitation of victims for gross violations of human rights and fundamental freedoms

¹²⁴ *Ibid.* The report was published in 2000. In that report it was noted that the state has the obligation to take 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 to them and also to provide or facilitate reparations.

¹²⁵ *Supra* note 24 at p31

formulation of the Basic Principles and Guidelines on the right to remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law adopted by the UN general assembly, in 2005.¹²⁶ Apart from these victims specific instruments many other international documents¹²⁷ also require the interests of victims to be taken into account in different ways. These include the Basic principles for the treatment of prisoners,¹²⁸ the UN Convention against Transnational organised Crime, The standard minimum rules for non custodial measures¹²⁹ and the Vienna declaration on crime and justice.¹³⁰ Thus it can be concluded that the recent efforts of UN is in line with giving emphasis to victim's rights including right to compensation.

3.2. Victim justice in international criminal law:

The Rome statute of International criminal court contains an extensive range of protective measures that victims can rely in their capacity as witnesses, and also their right to present their views and concerns at certain stages of the proceedings. The statute also contains effective provisions as to compensation. Under Article 75 the court provides for restitution, compensation and reparation directly against the convicted person.¹³¹ Court may also order reparations to be made available through the Trust Fund established under Art 79.¹³² The United Nations has formulated victim sensitive rules in the rules of evidence and procedures for the tribunals of former Yugoslavia and Rwanda¹³³ The statute of both the tribunals acknowledge a relationship between the accused's right to fair hearing and the need to protect victims and

¹²⁶*Ibid* at p32.

¹²⁷ See also UN Convention on torture which calls on states to make means for rehabilitation along with other forms of right an enforceable right.

¹²⁸ *Supra* note 24 at p32. Principle 10 : With the participation and the help of the community and social institutions , and with due regard to the interests of the victims , favourable conditions shall be created for the reintegration of the prisoner into society.

¹²⁹ Rule 8(1) The judicial authority having at its disposal a range of non custodial measures should take into consideration in making its decision the rehabilitative needs of the offender , the protection of society and the interests of the victim who should be consulted whenever appropriate.

¹³⁰ *Supra* note 24 at p32.

¹³¹ Art 75(1) of the ICC statute stipulates that court shall 'establish principles relating to reparations to or in respect of victims.' It may then determine the scope and extent of any damage, loss and injury to , or in respect of victims'. Under para (2) it may make an order directly against a convicted person specifying appropriate reparations to or in respect of victims , including restitution, compensation and rehabilitation. rule 85 provides that any natural persons who have suffered harm as a result of commission of any crime within the jurisdiction of the court' may receive compensation from the ' trust fund'. rule 98 of the Rules of evidence and procedure provides guideline as to how such reparations should be assessed.

¹³²*Supra* note 24, p 220

¹³³ *Ibid* at p32. The rules of procedure and evidence of the tribunal of former Yugoslavia applies mutatis mutandis to Rwanda tribunal.

witnesses.¹³⁴With respect to compensation, though ICTY and ICTR mechanism is less effective when compared with ICC statute. However, they also contain provisions¹³⁵for restitutions for victims of crime. Thus it is evident that interests of victims including their right to compensation are paid attention in the rapidly growing body of international criminal law.

3.3. Victims' rights at European level:

At the European level, both the council of Europe and the European Union have been involved in setting standards for victim's rights. The Council of Europe in 1983 has formulated the European convention on the compensation of victim of violent crimes which lays down the minimum standards for the provision of state compensation to the victims of crime.¹³⁶The convention was followed by the adoption of Recommendation 85(11) on the position of victim in the framework of criminal law and procedure, 1985.¹³⁷

Within European union, in 1999, the commission issued a communication to the European parliament entitled "crime victims in the European union: reflections on the standards and action", which contained seventeen proposals which are grouped under five main headings: prevention of victimisation; assistance to victims; standings of victims in criminal procedure; compensation issues; and general issues and called on member states to implement fair and effective legislation in these areas.¹³⁸Following its adoption in the parliament, the justice and home affairs council adopted the Frame work decision on the standing of victims in criminal proceedings in 2001. ¹³⁹Unlike other international standards all the rights contained in the framework decision are binding and are directly applicable within the domestic legal order.¹⁴⁰ Thus at European level, also it is evident that victims right have assumed much importance. Hence it could be stated that victim's right has now assumed a prominent position in the international human rights arena and criminal justice discourse. Thus international human rights documents recognises Victims right to protection which include right to protection from being a victim ¹⁴¹and right against secondary victimisation; right to justice and fair treatment which include right to remedy, right to information and truth,; right to participation, and right

¹³⁴ Art21(2) which stipulates that the right to fair and public hearing is subject to the range of procedural measures for victims and witnesses contained in Art 22.

¹³⁵ Art 24(3) statute of ICTY provides for restitution. Rule 105 of ICTY rules of procedure and evidence.

¹³⁶ Arts 2 &4

¹³⁷*Supra* note 24 at p32

¹³⁸*Ibid* at p33

¹³⁹ *Ibid*

¹⁴⁰ *Ibid*

¹⁴¹ This right is same as right to protection of the public

to reparation. It is heartening to note that all these international instruments depict unanimity as to right o compensation of victims of crime.

4. Indian position:

In India as we follow adversary system of trial, wherein the state and the accused competes, hence victims' rights gets itself submerge in the public interest in prosecution and conviction of the offender. Fair trial rights of the accused are given predominance in the Criminal justice administration in the country and hence the victims do not get their due attention. This situation was highlighted even by the apex court in Rattan singh v. State of Punjab¹⁴² wherein it was observed that

“It is a 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 the victim reparation is still the vanishing point of our criminal law. This is the deficiency in the system, which must be rectified by the legislature.”

As far as participation of victim of crime in criminal justice process, his role is limited to that of an informant. As investigation is the sole prerogative of the police, victim's role is decided by the police and even if police decide to process victim is harassed in the process of extracting information. Similarly, victim also does not have any say if the magistrate on receipt of final investigation report from the police recommending the dropping of the case is inclined not to take action against the accused. The Code of Criminal Procedure does not require magistrate to hear the victim in this regard.¹⁴³ During the time of prosecution also, the victim does not have much say in the proceeding. Even with respect to the matters that affect his rights and interest like that of bail decisions, withdrawal of prosecutions¹⁴⁴ etc, the victim is not heard.

Victim's rights in India came into the focus of researchers only by late 1970's studies.¹⁴⁵ Initiatives by the University of Madras¹⁴⁶ in early 1980's culminated in the foundation of Indian

¹⁴² (1979) 4 SCC 719

¹⁴³. *Supra* note 4 atP381, In Bhagawant singh v. Commr of police (1985) 2 SCC 537, the apex court reiterated that such an opportunity of being heard is a must, see also PSC v. S.papaiah (1997) 7SCC 614

¹⁴⁴ *Ibid.* As per sec 321Cpc. The case may be withdrawn at any time before the judgement is pronounced.

¹⁴⁵ Early studies were on victims of dacoit gangs in the Chambal valley in 1978 see MEASURES FOR CRIME VICTIMS IN THE INDIAN CRIMINAL JUSTICE SYSTEM by Kumaravelu Chockalingam retrieved from www.unafei.or.jp/english/pdf/RS.../No81_11VE_Chockalingam.pdf visited on 15-03-2015

¹⁴⁶ In 1984, for the first time in India, an exclusive three day Seminar on Victimology was organized in University of Madras, involving research scholars, academicians and other practioners from Criminal justice system in the

society of victimology,¹⁴⁷ which drafted a Bill on victim assistance in 1996. Apart from various recommendations of law commissions¹⁴⁸ and National commission to review the working of the constitution,¹⁴⁹ an important epoch with respect to victim's right to compensation is recommendations of Malimath committee on reforms of criminal justice system in 2003. The committee recommended for a holistic "justice" to victims of crime by allowing them, as a matter of right, in criminal proceedings as well to seek compensation for the loss or injury.¹⁵⁰

4.1 Constitutional framework:

The Constitutional provisions as to Fundamental Rights especially Article 14 and 21 could be widely interpreted so as to include rights of the victims of crime including right to compensation. Similarly, the constitutional remedies¹⁵¹ for human rights violations, is extensively applicable to the victims of crime. There are provisions in part IV of the constitution in Directive principles of state Policy¹⁵² which could be liberally construed to cover victims of crime entitling them the right to compensation. Art 38(1) provides that state shall strive to promote welfare of the people by securing and protecting as effectively as it may a social order in which social, economic and political shall inform all institutions of national life. This provision if interpreted creatively is inclusive of victims rights. Similarly Art 39 which provides for policies to be followed by the state to secure economic justice and Art 40 which provide for equal justice is inclusive of victims rights to compensation. Article 41 inter alia states that state shall make effective provisions for "securing public assistance in the "cases of disablement" and in the "case of undeserved want". The expressions disablement and other

country. MEASURES FOR CRIME VICTIMS IN THE INDIAN CRIMINAL JUSTICE SYSTEM by Kumaravelu Chockalingam www.unafei.or.jp/english/pdf/RS.../No81_11VE_Chockalingam.pdf visited on 15-03-2015

¹⁴⁷ In 1992, Indian Society of victimology was founded to disseminate knowledge and awareness about the plight to victims of crime, to discuss about their problems and also mobilise support for the enactment of new laws for them. MEASURES FOR CRIME VICTIMS IN THE INDIAN CRIMINAL JUSTICE SYSTEM, by Kumaravelu Chockalingam www.unafei.or.jp/english/pdf/RS.../No81_11VE_Chockalingam.pdf visited on 15-03-2015

¹⁴⁸ Forty first, one fifty fourth and one fifty fifth Law Commission

¹⁴⁹ *Supra* note 54. The Commission to review the working of the Constitution (Government of India, 2002) has advocated a victim-orientation to criminal justice administration, with greater respect and consideration towards victims and their rights in the investigative and prosecution processes, provision for greater choices to victims in trial and disposition of the accused, and a scheme of reparation/compensation particularly for victims of violent crimes.

¹⁵⁰ *Supra* note 4 at p373.

¹⁵¹ Art 32 and Art 226 of the Constitution of India. In fact honourable Supreme Court has in several cases granted compensation to the victims for human rights violations under public law remedy.

¹⁵² Art 38(1) of the Constitution of India which provides that state shall strive to promote welfare of the people by securing and protecting as effectively as it may a social order in which social, economic and political shall inform all institutions of national life.

cases of undeserved want could be surely interpreted to include victims of crime and hence is state is obliged to provide public assistance to victims by way of monetary compensation apart from guaranteeing other rights to them.¹⁵³ These directives though non justiciable, imposes obligation on the state to take positive action for the welfare of the people. Moreover many of the Directives are elevated to the status of Fundamental Rights by judicial decisions.¹⁵⁴ Apart from these, as per Art 51-A of the constitution it is the Fundamental duty of every citizen of India, "... to have compassion for living creatures" and "to develop humanism". These provisions also could be creatively interpreted as to include victims of crime.¹⁵⁵

4.2 Legal Frame work:

There are few statutory provisions¹⁵⁶ which can be invoked to compensate victims of crime and to that extent justice to the victims. The main statute which provides for compensation to the victims of crime is the Code of criminal procedure. The Code defines victim and provides for compensation to the victim of crime. Section 357 is the most important provision which provides for grant of compensation to the victims of crime. This provision combines the procedures of both criminal and civil process as it would be just and necessary so as to save time and money in seeking remedies in two different courts.¹⁵⁷ In fact even the old code had provision for providing compensation to the victims of crime.¹⁵⁸ The Law Commission of India in its forty First report¹⁵⁹, had stated that our courts are not exercising the statutory powers as to awarding compensation and recommended that compensation must be provided as punishment in the penal code.¹⁶⁰ Therefore based on the recommendation of the Law Commission report, the provision in the old code was replaced in the form of Sec 357. The provision stipulates that when court imposes a sentence of fine or any sentence including death

¹⁵³ See also Cf Victims and the Criminal Justice System in India: Need for a Paradigm Shift in the Justice System by Murugesan SRINIVASAN*Jane EYRE MATHEW www.doiserbia.nb.rs/ft.aspx?id=1450-66370702051S visited on 28-02-2015

¹⁵⁴ For instance see Unnikrishnan v. State of Andhra Pradesh (1993) 1 SCC 645- right to education; Randhir Singh v. Union of India AIR 1982 SC 879 etc.

¹⁵⁵ *Supra* note 60

¹⁵⁶ *Supra* note 1 at p350-361

¹⁵⁷ Dr KN Chandrasekharan pillai, R.V. Kelkers Criminal procedure,614, (5th ed, 2008, 2012 reprint)

¹⁵⁸ Sec 545 (1) (bb) and 546 of CRPC 1898 which provided for compensation for victims of crime.

¹⁵⁹ 1969

¹⁶⁰ Law commission intended to that substantive power must be given to the trial court in this regard, and compensation must be provided as punishment in the penal code. See Bharat B das , *Restorative justice and Victims : right to compensation in crime victims and justice: an introduction to restorative justice*,44-55 (P Madhav soma Sundaram, K Jaishankar, S Ramdass,ed.,2008)

sentence of which fine forms part of the sentence, it may award compensation to the victim, from the whole or part of the fine that is recovered from the offender.¹⁶¹ Compensation may be given to the victim if in the opinion of court it is recoverable by the civil court, for the loss or injury caused by the offence.¹⁶² Compensation can also be provided to those persons who are entitled under the Fatal Accidents Act, 1855, to recover damages from persons¹⁶³ sentenced, for the loss resulting from such death.¹⁶⁴ Thus under Section 357(1) compensation is payable for any loss or injury whether physical or pecuniary and can be awarded only when the accused is punished with a sentence of fine or some other sentence of which fine is a part. It is paid out of the amount of fine that is recovered. Hence the compensation amount in no case could exceed the fine amount.¹⁶⁵ Moreover the quantum of fine would depend upon the limit to which the fine can be imposed for that particular offence and also upon the extent to which the court is empowered to impose the same.¹⁶⁶

Section 357(3) is more liberal and it provides that compensation can be awarded when court imposes a sentence of which fine is not a part of it. But it seems that the liberal provision of Subsection (3) of Sec 357 is applicable only if the sentence of fine is not imposed.¹⁶⁷ If the sentence of fine is imposed the compensation can be ordered to be paid only out of the fine amount.¹⁶⁸ Under Sec 357 (3) the power of magistrate to award compensation is unlimited.¹⁶⁹ As per Section 357, compensation may be awarded by appeal late court or revisional court.¹⁷⁰ The amount recovered as compensation under this provision may be taken into consideration by civil court while awarding compensation in a subsequent suit.¹⁷¹

As per Criminal procedure code Amendment Act, 2008, Section 357 A¹⁷² was inserted which specifically recognised victims right to compensation. The said provision deals with the victim

¹⁶¹ Sec 357(1)

¹⁶² Sec 357 (1) (b)

¹⁶³ sentenced for causing death or abetment thereof

¹⁶⁴ Sec 357 (1) (c)

¹⁶⁵ *Supra* note 24 at p615

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid*

¹⁶⁸ *Ibid*

¹⁶⁹ *Ibid.* For instance a second class judicial magistrate is empowered to impose fine only up to an amount not exceeding one thousand rupees but if he awards compensation under Section 357(3) instead of fine, he can do so without any apparent limit.

¹⁷⁰ Sec 357(4)

¹⁷¹ Sec 357 (5)

¹⁷² This provision was inserted on the basis of 152nd and 156th report of the recommendations of Law commission in 1994 and 1996 respectively.

compensation scheme. The provision stipulates that every state government in consultation with the Central govt shall prepare a scheme for providing funds for the purpose of compensation to the victim of crime or his dependants who require rehabilitation and who have suffered loss or injury due to the crime.¹⁷³ At the end of the trial, the trial court may recommend for compensation in two situations.¹⁷⁴ Firstly, if it is satisfied that the compensation awarded under section 357 is inadequate, for rehabilitation. Secondly, if the case ends in acquittal or discharge of the accused and that the victim has to be rehabilitated. Once the court makes recommendation for compensation, it is the state or the District Legal service authority as the case may, which determine the quantum of compensation to be awarded under the compensation scheme.¹⁷⁵ The victim or his dependants may also make an application for compensation, to the state or the district legal service authority, if the offender is not traced or identified and where no trial takes place.¹⁷⁶ When the district or the State legal service authority receives the recommendation or the application it may award adequate compensation after completing the enquiry within two months.¹⁷⁷ On certificate from the police officer¹⁷⁸ or jurisdictional magistrate, the district or the State Legal Service authority, may order for immediate first aid facility or medical benefits to be made available free of cost or provide any other interim relief as it deem fit, in order to alleviate the sufferings of the victim.¹⁷⁹ Thus this provision is really in tune with providing rehabilitative rights to the victim under international human rights instruments. Any amount of compensation which is awarded by the court is recoverable as if it were a fine.¹⁸⁰ The amount of fine may be recovered by the attachment and sale of moveable property of the offender and also from both movable and immovable property as arrears of land revenue.¹⁸¹ Apart from there are also other provisions in the code which authorises payment of compensation.¹⁸²

¹⁷³ Sec 357 A (1)

¹⁷⁴ Sec 357 A (3)

¹⁷⁵ sec 357 A (2)

¹⁷⁶ Sec 357 A (4)

¹⁷⁷ Sec 357 A (5)

¹⁷⁸ Not below the rank of officer in charge of the police station

¹⁷⁹ Sec 357 A (6)

¹⁸⁰ Section 431 Crpc.

¹⁸¹ Section 421 Crpc.

¹⁸² See *Supra* note 60.

Sec 250 Crpc authorises magistrate to direct complainants or informants to pay compensation to people accused by them without reasonable cause. Sec 358 empowers the court to order a person to pay compensation to another person for causing a police officer to arrest that person wrongfully.

Various law commissions have also recommended for victim compensation scheme.¹⁸³ National commission to review the working of the constitution,¹⁸⁴ has also recommended for a victim oriented approach of criminal justice system and also provided for victim compensation scheme. Malimath Committee has also made recommendations with respect to right of victim. Apart from making many salutary recommendations¹⁸⁵ for rights of victims, the committee made strong recommendation for separate legislation by parliament for victim compensation which should provide for victim compensation fund. The committee opined that for the purpose of the guidance of court, the law should provide scale of compensation for different offences. The law must also provide the conditions under which the compensation may be granted or withdrawn.

The code of criminal procedure (Amendment) Act, 2008,¹⁸⁶ has made tremendous contribution in filling the gaps in the law as far as victim's rights are concerned.¹⁸⁷ Apart from providing for various protection schemes for victim/witness protection especially in rape cases,¹⁸⁸ the Act

¹⁸³ 41 st, 154th and 156th.LCR.

¹⁸⁴ Refer *Supra* note 55. The Commission to review the working of the Constitution (Government of India, 2002) has advocated a victim-orientation to criminal justice administration, with greater respect and consideration towards victims and their rights in the investigative and prosecution processes, provision for greater choices to victims in trial and disposition of the accused, and a scheme of reparation/compensation particularly for victims of violent crimes .

¹⁸⁵ Refer *Supra* note 55

The victim, and if he is dead, his or her legal representative, shall have the right to be impleaded as a party in every criminal proceeding where the offence is punishable with seven years' imprisonment or more;

- In select cases, with the permission of the court, an approved voluntary organization shall also have the right to implead in court proceedings;
- The victim has a right to be represented by an advocate and the same shall be provided at the cost of the State if the victim cannot afford a lawyer;
- The victim's right to participate in criminal trial shall include the right: to produce evidence; to ask questions of the witnesses; to be informed of the status of investigation and to move the court to issue directions for further investigation; to be heard on issues relating to bail and withdrawal of prosecution; and to advance arguments after the submission of the prosecutor's arguments;
- The right to prefer an appeal against any adverse order of acquittal of the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation;
- Legal services to victims may be extended to include psychiatric and medical help, interim compensation, and protection against secondary victimization;
- Victim compensation is a State obligation in all serious crimes. This is to be organized in separate legislation by Parliament. The draft bill on the subject submitted to Government in 1995 by the Indian Society of Victimology provides a tentative framework for consideration;
- The Victim Compensation Law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority. (Government of India,2003)

¹⁸⁶ In fact some of the recommendations of Malimath Committee found expression in this amendment. For instance right to counsel of the victim, right to appeal etc.

¹⁸⁷ Girish Nahyanker, *The code of criminal procedure (Amendment) Act, 2008 vis-a- vis witness protection*, 2014 Cri .L J.99-104.

¹⁸⁸ *Ibid* .Sec 26A which provides that in rape cases as far as practicable women should be the presiding officer, proviso to subsection (1) of Sec 157 was incorporated which provides for recording of the statement of rape victim at her place of residence. Subsection (1) & (2) of section 309 was incorporated which provided for speedy trial in rape cases, Proviso to Subsection (2) of sec327 was incorporated which provides for in camera trial in rape cases,

also provided for right to counsel for the victim,¹⁸⁹ right to appeal against adverse order passed by the trial court¹⁹⁰ and also incorporated Section 357 A which provided for victim compensation scheme.

As per Criminal law Amendment Act, 2013,¹⁹¹ victims of acid attack are granted compensation which could be utilised in their rehabilitation.¹⁹² Apart from these, there are also other enactments like fatal accidents Act, 1855,¹⁹³ The Motor vehicles Act, 1988,¹⁹⁴ and the Probation of offenders Act, 1958¹⁹⁵ which provide for compensation to the victim. However these institutional arrangements designed for compensating victims of crime leaves it to the discretion of the court to recover and pay compensation.¹⁹⁶ It is really a matter of great solace that some new legislations like The Protection of Women from Domestic Violence Act, 2005¹⁹⁷ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007¹⁹⁸ The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989¹⁹⁹ provides for mandatory compensation. However, these fragmented legal frameworks providing for compensation by an offender to his victims for loss suffered by the commission of the offence seems inadequate and a comprehensive legislation is the need of the hour.²⁰⁰ In fact judiciary also has in several cases stressed the need for a comprehensive legislation in this area.

4.3 Judicial contribution:

Judiciary has in several cases awarded compensation to the victims under Crpc while convicting the accused. The perusal of the precedents depicts that the trend of judiciary in

Proviso to subsection (3) of section 327 has been inserted which provides for victim identity protection in rape cases, Proviso to subsection (3) of Sec 161 and proviso to se 275 was inserted which provided for electronic recording of statement of victims.

¹⁸⁹ Proviso to sec 24 (8)

¹⁹⁰ Proviso to Sec 372.

¹⁹¹ The Act also inserted Sec 357 B and Sec 357 C to crpc. Sec 357B states that compensation to Victim under sec 357 a is in addition to the fine under sec 326A or Sec 376 D of IPC. Sec 357 C provides for treatment of victims.

¹⁹² Sec 326 A and Sec 326 B of IPC incorporated.

¹⁹³ This act provides compensation to the dependants for the loss occasioned by the death of a person caused by an actionable wrong .Sec 1-A

¹⁹⁴ Chap X Sections 140-142 provides for compensation to the victims , even without fault in certain cases to avoid hardship to the dependants due to the loss of deceased or to the victim becoming permanently disabled. To avoid anomalies and simplify the procedure the Act has also provided for standard amount of compensation payable in such cases. See *Supra* note 1.

¹⁹⁵ Sec 5. But it limited only to the cases in which the person is sent on probation.

¹⁹⁶ *Supra* note 4 p379.

¹⁹⁷ Sec20 provides for monetary relief.

¹⁹⁸ Sec 9-13

¹⁹⁹ Section 21(2)iii

²⁰⁰ *Supra* note 4

earlier days as far as awarding of compensation under Sec 357 was not so optimistic. The apex court had considered the applicability of Sec 357, in Palaniappa Gounder v. State of Tamil Nadu and others²⁰¹. In that case, the accused was awarded death penalty by the trial court and the High Court on appeal commuted the sentence to life imprisonment but imposed a fine of amount of Rs20,000/- , out of which Rs15,000/- must be paid to the dependants of the victim. The apex court though upheld the order of High court in imposing fine reduced it to RS 15,000/- .The court held though there is legitimacy to impose fine , it was not necessary that it should always be used. Court also held that legitimacy is different from propriety. Court stated that awarding fine together with death penalty would not serve any social purpose. In Sarwan singh and others v. State of Punjab ²⁰²apex court held that while awarding compensation court should first determine whether it is a fit case for awarding the same. If it is found that compensation may be awarded, the court should consider whether the accused is capable of paying the compensation, as otherwise it would not serve any purpose. Court also held that while awarding compensation under Sec 357 several factors like the nature of offence, capacity of the accused, justness of the claims of the victim etc and other relevant factors must be taken into consideration and has laid down that the amount of fine out of which compensation is to be paid shall not be excessive.²⁰³ However a different trend becomes evident in Hari singh v. Sukbir Singh²⁰⁴, Wherein the apex court had held that the power of the courts under Sec 357 to award compensation is not ancillary but in addition to other sentences. The object of this provision is to reassure the victim that he is not a forgotten party in the criminal justice system. The court also held that the payment of compensation under this provision must be reasonable. What is reasonable depends on the facts and circumstances of each case like the nature of the crime, ability of the accused to make payment, justness of the claims of the victim etc. Court also recommended that this power must be exercised liberally by all courts so as to meet the ends of justice.²⁰⁵ In Jacob George v. State of Kerala²⁰⁶, Supreme Court held that the order of payment of compensation under Sec 357 may be enforced by imposing sentence in default of it. In State of Gujarat and another v. Hon'ble High Court of Gujarat²⁰⁷ Court held that the opinion given by Supreme Court in palaniappa's case as to exercise of power to award compensation along with severe penalty must be confined to the facts of that case and court

²⁰¹ AIR 1977 SC 1323

²⁰² AIR 1978 SC 1525

²⁰³ Court also referred Palaniappa Gounder v. State of Tamil Nadu ad others AIR 1977 SC 1323.

²⁰⁴ AIR 1988 SC 2127

²⁰⁵ In this case court had enhanced the amount of compensation to RS 50,000/-

²⁰⁶ (1994) 3 SCC 430

²⁰⁷ AIR 1998 SC 3164

held that recent trend is to give weight age to the right to reparation for victims. Court also held that in the effort to protect the rights of the accused, the victim or his family, who had been incapacitated by the criminal act of the accused, cannot be forgotten. It may be true that the life or the honour which is lost cannot be recompensed but *monetary compensation would at least provide some solace*. The change in trend may be because of momentum that was taking place in the international arena especially in the wake of Declaration on Basic principles of justice to victims of crime and abuse of power, 1985.

In spite of that courts were reluctant to exercise power under Sec 357, and the apex court had in several cases exhorted the courts to exercise this power. The apex court had also called for setting up of victim compensation Board, which also went into deaf ears. Apart from that, another trend shown by higher judiciary²⁰⁸ was to reduce the quantum of substantive sentence given by the trial court and at the same time to enhance the quantum of fine to be awarded as compensation. The courts had adopted this strategy as it might had felt that the enhanced compensation would give more solace to the victim and that it would serve the social purpose of awarding punishment more effectively. In some cases when court did not interfere with the sentence, it had reduced the amount of compensation.²⁰⁹ Thus it can be seen that court was reluctant to impose fine when severe punishment is provided. It was also evident that whenever compensation is provided there is a trend to reduce the quantum of substantive sentence. Thus in the sentencing process, the compensation is considered as a mitigating factor while reducing the substantive sentence.²¹⁰ Moreover in several decisions court though had held that right to compensation under Sec 357 is in addition to the remedy that is available, had also stated that it cannot be awarded arbitrarily. Court had reiterated that several factors must be taken into consideration while awarding compensation including the capacity of the accused to make the payment. In Dilip S Dahanukar v. Kotak mahindra Co. and Anr²¹¹, it was even held that an

²⁰⁸ Bhupendra singh v. State of madhya pradesh AIR 1981 SC 1240; Mohd Giasuddin v. State of Andhra Pradesh AIR 1977 SC 1926.; in Guru Swami v. State of Tamil nadu 1979 (3) SCC 799, the apex court held that though the death sentence is reduced to life imprisonment, it is very much necessary that the widow and children of the deceased should be compensated. In Baldev singh v. State of punjab 1995 (6) SCC 593, court substituted sentence of fine as compensation for a severe punishment. Ballabh Pant v. Union Territory of Delhi AIR 1977 SC 892; Brijlal v. Prem Chand AIR 1989 SC 1661, PRABHU Prasad shah v. State of Bihar AIR 1977 SC 704. See also Manish jalan v. State of Karnataka, AIR 2008 SC 3074, wherein SC reduced the sentence to the one which is already undergone but awarded a compensation of RS 1 lakh to the mother of the deceased.

²⁰⁹ Rachhapal singh v. State of Punjab AIR 2002 SC 2710, IN this case SC upheld the imprisonment for life, at the same time reduced compensation from 2 lacs to 1 lakh.

²¹⁰ M.S. Deshpande, *Protection of human rights by invoking compensatory jurisdiction by courts*, 2014 Cri. L.J. 49-53 at 50

²¹¹ 2007(6) SCC 528

enquiry, though of summary nature may be made as to determine the paying capacity of the accused. The Court also held that though power under Sec 357 (3) is not subject to any limitation, it should not be used arbitrarily and must be used only in appropriate cases.²¹² Thus it could be stated though compensation may be awarded under Sec 357, it was limited in scope as it could be awarded only if there is conviction and several factors have to be taken into consideration while awarding compensation

However it is heartening to note that in *State of Punjab v. Ajaib Singh*²¹³ the apex court had directed the accused to deposit an amount of RS 5 lakhs to be paid as compensation to the victims though he was acquitted by the lower court.

Though not under Section 357, the apex court and High Courts had awarded compensation to victims of crime under Article 32 and 226 respectively as public law remedy.²¹⁴ As far as sexual offences are concerned; the apex court's contribution is really laudable.²¹⁵ In *Delhi Domestic working women's forum v. Union of India*²¹⁶ the apex court had laid down several parameters in assisting victims of rape had directed that in the case of rape, and held that compensation must be awarded to the victim whether or not accused is convicted by the criminal injuries compensation Board. But in spite of that victim's right to compensation was not fully satisfied in criminal justice system. This situation was highlighted by Malimath Committee in its report. Though victim compensation scheme was incorporated in the legal frame work by Crpc (Amendment) Act, 2008, and Sec 357 A had been incorporated, the award of compensation had not become a rule. In fact some positive trends have become evident in recent years. For instance in *Ankush Shiwaji Gaikwad V. The state of Maharashtra*,²¹⁷ Supreme Court had held that, taking into consideration the legislative intention of the provisions relating to victim compensation; it seemed that this power was conferred on the court to reassure the victim that he is not a forgotten party in the criminal justice system. Hence Sec 357 must be read as to

²¹² In courts own words " such a jurisdiction cannot be exercised at the whims and caprice of a judge"

²¹³ AIR 1995 SC 975

²¹⁴ *Rudal shah v. State of Bihar* AIR 1983 SC 1086 ; *Bhim singh v. State of Jammu and Kashmir* AIR 1986 SC 494; *Saheli v. Commissioner of police* AIR 1990 SC 513; *Nilabati behra v. State of orissa* AIR 1993 SC 1960; *state of MP v. Shyam sunder Trivedi* (1995) 4 SCC 262; *D K Basu v. State of west Bengal* AIR 1997 SC 610 etc.

²¹⁵ *The Chairman Railway Board v. Chandrima Das* AIR 2000 SC 988; *Bodhisattwa Gautam v. Subhra chakraborty* AIR 1996 SC 922, wherein court held that it ha inherent jurisdiction to pass any order as it deems fit in the interests of justice and directed to pay an interim maintenance of Rs 1000 till the disposal of the criminal complaint.

²¹⁶ (1995) 1 Scc 14

²¹⁷ AIR 2013 SC 2454

confer an obligation on the courts to apply their mind in the question of compensation in criminal case. Otherwise it would defeat the very object of enacting this provision. Thus the word “may” used in Sec 357 must be read as “shall”.²¹⁸ Therefore apex court held that though awarding or refusing to award compensation may be within the discretion of the court, there exists a mandatory obligation on the part of the court to apply its mind in every criminal case. This necessarily implies recording of reasons for awarding or refusing compensation. The court must consider the issue of awarding compensation, only when the conviction of the accused is recorded. An enquiry may be conducted as to the capacity of the accused to pay the compensation before fixing the sentence and the compensation. Thus it can be stated the power of the court to award compensation is tied with an obligation for the same. Thus it is submitted that though there is no mandatory obligation on the part of the state to award compensation under Sec 357, it is really laudable that judiciary imposed a mandatory obligation on the part of courts to decide in every criminal case the necessity as to awarding of compensation. This is really a welcome trend as far as providing justice to the victims.

As far as Sec 357 A of Crpc is concerned, though it was incorporated in 2009, it is only very recently that the Supreme court had begun to intervene. In Re: Indian woman says gang raped on orders of village court published in Business and financial news dtd 23-01-2014²¹⁹, the Hon’ble apex court Suo Moto took action based on news item and directed the District judge to inspect the place and give report. The court held that victim has suffered due to failure on the part of the state to protect her. Though her lost prestige and honour could not be regained, the monetary compensation could be of some solace. Court held that by virtue of Sec 357 A, state Governments has a responsibility to formulate the schemes for compensation of the victim which is mandatory in nature. It is for the District or the State Legal Services Authority to determine the quantum of compensation in each case, though no rigid formula has been evolved in this regard. In this case, the court awarded a compensation of Rs 5 lakhs as interim compensation under Sec 357 A.

Regarding victims of acid attack, under Sec 357 A, in Laxmi v. Union of India²²⁰, the Supreme Court, had held that, a uniform compensation of Rs 3 lakhs must be paid by all states and union territories to the victims. Of which 1 lakh should be paid immediately within 15 days and

²¹⁸ *Supra* note 117 at p53

²¹⁹ AIR 2014 SC 2816

²²⁰ (2014) 4 SCC 427

remaining 2 lakhs should be within 2 months as expeditiously as possible. The apex court even stated that compensation must be provided to the victim irrespective of the outcome of the prosecution. For instance, in *Abdul rashid v. State of odisha and others*²²¹ it was held that Article 21 is not limited to providing compensation when state or its agencies is guilty of an act but also to rehabilitate the victim or his family when crime is committed against him. It was stated that Art 357 A was incorporated as a need was felt to provide compensation to the victim irrespective of the outcome of the prosecution. In this case court awarded interim compensation to the father of the victim under Sec 357A.

A land mark decision in victim compensation under Sec 357A came very recently in *Suresh v. State of Haryana*²²². In this case the Supreme Court awarded an interim compensation under Sec 357 A, and directed the state to pay an amount of Rs 10 lakhs to the family of the victims who had been abducted and murdered. Court held that High Court ought to have had awarded the compensation even without an application from the dependants. The apex court lamented that though several years had passed since the enactment of Sec 357A, the award of compensation has not become a rule and interim compensation was not being granted by courts. The court gave the following directions:²²³

1. It is the duty of the court, on taking cognizance of a criminal offence , to ascertain whether there is tangible material which showed the commission of the crime, whether the victim was identifiable and whether the victim of crime require immediate financial relief.
2. On being satisfied either on application or suo moto, the court ought to direct the grant of interim compensation, subject to the final determination of compensation at a later stage. This duty continues at every stage of criminal case, where compensation ought to be given but not given, irrespective of the application by the victim.
3. At the stage of final hearing , it is obligatory on the part of the court to advert to the provision and record a finding as to whether a case for grant of compensation had been made, if so who is entitled to compensation and how much.
4. Award of the compensation can be interim

²²¹ indiankanoon.org/doc/105359290/ visited on 19-03-2015

²²² 2015 Cri L J 661

²²³ 2015 Cri L J 661 at p674

5. Gravity of the offence and need of victim are to be the guiding factors, apart from other factors which are relevant to the facts and circumstances of the case.
6. There is also a need to consider upper revision in the scale of compensation. Pending such hike, scale notified by the state of Kerala²²⁴ under the scheme may be adopted unless the scale awarded by any other state or Union Territory is higher.

The court also directed the states of Andhra Pradesh, Telengana, Madhya Pradesh and Meghalaya to notify the scheme within one month from the date of receipt of the copy of the order. The court also directed that a copy of the judgement be forwarded to the National judicial Academy so that all judicial officers in the country can be imparted with the requisite knowledge so as to make the provision operative and meaningful.

Thus it can be seen that apex court is making all endeavour to properly implement the beneficial provisions as to victim compensation. It is of no doubt that if the directions of Spume Court are implemented effectively, it may give some solace to the ailing soul and body of the victim and his dependents. This decision again points to the lack of comprehensive legislation in this regard.

5. Conclusion and suggestions:

Every crime depicts the failure on the obligation of the state to respect, protect and fulfil the human rights of its subjects. Not only that every single crime, evidences failure on the part of state, to maintain law and order, harmony and tranquillity in the society, to protect life and property of the people and to use its authority to suppress crime and punish offenders. Crime often entails substantive harm to people and not merely symbolic harm to the social

²²⁴ Victim compensation scheme was notified by Govt of Kerala in February 2014. Some amendments were made to it in July 2014. Under the scheme, rape victims will be entitled to a compensation of up to Rs.3 lakh, while sexual assault victims and minors subjected to physical abuse will get a maximum of Rs.50,000. The compensation for dowry-related violence can go up to Rs.2 lakh, while the amount for acid attack victims ranges from Rs.1 lakh to Rs.3 lakh depending on the degree of disfigurement. The compensation for death due to crime is Rs.5 lakh, that for culpable homicide not amounting to murder is Rs.3 lakh, and for causing death by negligence Rs.2 lakh. Permanently disabled victims (80 per cent or more) will get a maximum of Rs.3 lakh, while those with partial disability (40 to 80 per cent) will get up to Rs.1 lakh. The compensation for burns victims ranges from Rs.20,000 to Rs.2 lakh depending on the severity, while that for fractures and dislocations and loss of fertility is up to Rs.1.5 lakh. The scheme envisages an additional compensation of Rs.1 lakh for rehabilitation of victims. It is proposed that fund would be created for the scheme with budget support, Corporate Social Responsibility (CSR) contributions from public and private undertakings, and donations from the public. <http://www.thehindu.com/todays-paper/tp-national/tp-kerala/compensation-scheme-for-victims-of-crime/article6172117.ece> visited on 18-03-2015

order.²²⁵Therefore it is desirable that the structures of criminal justice as well as their theoretical bases should reflect the interests of individual victims as well as the broader interests of the state.²²⁶

In fact law commission, National Commission to review the working of the constitution, Malimath Committee and also several decisions of the apex court have unanimously highlighted the need to provide justice to the victims including right to assistance and compensation in all stages of criminal justice process. It is not to be forgotten that if the victim chooses not to cooperative with the criminal justice system, the whole system will collapse. Hence there is an urgent necessity to streamline the criminal justice system by legitimately including victims' rights in the system, especially right to monetary compensation. It should be made available whether or not conviction of the accused take place or whether he is apprehended or trial has begun or not. In fact the contribution of judiciary with respect to providing compensation for violation of his human rights is really appreciable. With respect to sec 357 also the judiciary through its creative interpretation had attempted to provide remedy to the victim. It is now mandatory that court should determine in every criminal case the necessity as to awarding compensation. The criminal Procedure (Amendment) act, 2008 which incorporated Sec 357 a providing for victim compensation fund is a giant leap in this regard. The recent contribution of apex court in implementing this provision is also appreciable and that presently it has become obligatory on the part of court to provide interim compensation in deserving cases. Now that victim could get some solace by means of interim compensation provided under the scheme. It is now necessary that conviction of the offender must be recorded. Though Supreme Court has taken initiative to make the judicial members to be aware of this scheme, it is also necessary that common men also must be made aware of this provision. Legal awareness camps must be held in this regard. It is also important that wider publicity must be given in the media as to the availability of this scheme. At the same time it is also necessary that there should be uniformity as to the amount of compensation and that it is arbitrarily low in some states as lamented by Supreme Court in Suresh v. State of Haryana. Though the Honourable apex court has strived to achieve uniformity in this regard, it highlights an urgent requirement for a comprehensive legislation on victims' rights.

²²⁵ *Supra* note 4 at p385

²²⁶ *Supra* note 24 at p158.

It is also pertinent to note that any compensation scheme would involve three major issues.²²⁷

1. Who should be paid compensation? 2. How much should be paid? 3. What should be mechanism? First issue involves which categories of victim or his dependents should get compensation like the cases in which the offender is not apprehended but victim is identified, or offender is below 7 years of age or insane, or where prosecution has not taken place or in sexual offences where the offender is acquitted etc²²⁸ As to the second issue, it may involve determination as to how much amount is to be paid as compensation. It may cover loss due to permanent or temporary physical disability, mental agony, loss of employment, medical expenses etc suffered by the victims or his dependents. Compensation may also include interim one, to meet the emergency situation. As to the third issue, suitable mechanism must be there to determine the amount of compensation, for expeditious disbursal of the amount, to decide about falsity of the claims, issues as to inflated demands. A mechanism which deals with all the issues relating to the claims of compensation must be there. It is advisable that the mechanism works at district, state and national level. All these again point towards the need for a comprehensive legislation which defines victim's rights covering in unambiguous terms all issues relating to claims of compensation. It is laudable that a beginning has already been made by staunch initiatives by judiciary. It is really a matter of solace that The Twentieth Law commission has undertaken a study on comprehensive review of criminal justice system in India. It may be hoped that the commission may come up with commendable recommendations in this aspect. It is pertinent to note that the criminal justice administration in any country will move towards a new direction of better and speedier justice only when victims' rights are recognised. It is now high time for the legislature to rise to the occasion and enact a comprehensive legislation on victims' rights in criminal justice so that victim feel that society care for him and that he is no longer a *forgotten party* in the criminal justice administration.

²²⁷ Rabindra K Mohanty & Satyajit Mohanty ,Text book on criminology, penology and victimology,454(2012)

²²⁸ *Ibid*