

PUBLIC LAW REMEDY THROUGH COMPENSATORY JUSTICE

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ABSTRACT: *Crime is viewed as the ever-increasing disease of society. In general, the administration of criminal justice from the perspective of victims of crime was inadequate. The fundamental purpose of the Criminal Justice is to protect society from crime and penalize the criminal. Nevertheless, there is no equivalent worry in the criminal justice system of people who experienced loss or damage. The pleasure of the victims is that the offender gets punished. Modern criminologists have a propensity to highlight the reform, reintegration and legal help of the defendants. The purpose of the penalty is not only to protect and reform offenders, but also to protect the interests of the victims.*

The civilized state does not permit a victim, to preserve law and order in society, to either punish the offender or separate the loss and harm incurred. The Criminal Administration of Justice generally considers that the victim's claim is adequately fulfilled by the guilt and sentencing of the perpetrator.

This old way of thinking appears unfair and inequitable, nevertheless, in this contemporary context, when society and the state resort to all forms of measures for the correction and rehabilitation of the criminal. While today's criminal legislation cannot accept the ideas of punishment and vengeance as a strategy to punishing offenders, the harm and suffering done to the victims should also not be disregarded.

As a new element of criminal law, compensatory jurisprudence is developing rapidly because it has two aims, one, the victims are not lost sight of in the criminal justice system and the other, an accused person is made to realise that he has an obligation to those who have been wounded through his actions.

Movement to review the topic of compensation or restoration of the victim is now increasing in various nations including ours. When criminal attorneys, criminologists, and social workers realise that the offender cannot make restitution for his conduct, the State envisages the option of indemnifying the victim.

INTRODUCTION

Recognized the basis of law being implemented by ordinary civic tribunals is compensation for victims. The victims can demand compensation, under the torts law, for the harm incurred by the person or property suffered. For the victims, a civil court judgement for damages or compensation takes decades, which causes them so much trouble. Recognized the basis of law being implemented by ordinary civic tribunals is recompense for sufferers. The victims can demand compensation, under the torts law, for the harm incurred by the person or property incurred. The appearance of compensatory case law in light of the philosophy of human rights is a positive sign that it has undertaken, irrespective of the absence of any explicit constitutional provision and judicial precedents, the task of protecting the right to life and to the personal freedom of all people.

The Supreme Court has authority under Article 32 of the Constitution for the enforcement of, as may be appropriate, all rights given in Part III of the Constitution, including the writings in the nature of habeas corpus, mandamus, prohibition, quo-warranto and Certiorari. The right of the Superior Court to make the enforcement procedure provided for in Part III 'assured,' i.e. the right to approach the Supreme Court to enforce any of the rights bestowed on in Part III of the Constitution, as provided in Article 32, is a basic right in itself. The Irish Courts, which have a written constitution ensuring fundamental rights but, like the Indian Constitution, do not include a remedy for the infringement, have taken the concept of rectifying the error by awarding monetary compensation against the State for failing in the defence against basic right of citizens.

Article 32(1) stipulates that the Supreme Court may advance the application of basic rights by proper actions. According to Article 32,(2), the Supreme Court shall have the power, and may decide on any method for the execution of basic rights. The

Supreme Court can even provide remedial aid in this Constitutional clause which can include compensation in "suitable situations."

• **THE HISTORICAL PERSPECTIVE OF COMPANSATORY JURISPRUDENCE**

The notion of compensation for the victim of the wrong has been important in most law systems in the history of criminal legislation. A wounded person or family of a murdered person might in the first instance seek comparable revenge from an unjust perpetrator and his kin given that there is no more of it than rightly desired.¹ It was subsequently agreed to pay blood money instead of blood feud, even if the wounded person or the relative was permitted by law to take money or take blood for a given crime. In the Mosaic Law and the Criminal Codes of ancient Greece and Rome, the compensatory concept for the victims of crime had a significant role.

A burglar had to confiscate double the worth of the stolen items for the victims and public treasuries under the Penal Code of Solon (Athens). Based on the location of wrongdoing, the Roman law defined gradual increases in compensation payable.² Other crimes in which restitution was owed were, besides stealing, violence, divorce and infringement.

In Anglo-Saxon, the idea of recompense was the high mark of England's growth. The Anglo-Saxons utilized money compensation in the form of damages or

¹ David M. Walker, *The Oxford Companion to Law* (1980), p. 138; See also Pollock and F. Maitland, *The History of English Law* (1898)

² David M. Walker, *The Companion to Law* (1980), p. 138.

compensation for victims of miscarriages first consistently.³ The offender, Wer or Bot to the sufferer or his kin and the writing to the King or to the Feudal Lord in Anglo Saxon Britain had to make compensation payments for them. The worth of money on a person was 'wer' in his rank and the 'wergild' or 'bot' recompense. Furthermore, there was a punitive fee paid for actually breaking the King's peace by the King or by any other public authority. But towards the end of the mediaeval ages, due to the simultaneous increase in the royal and ecclesial powers that sharply distinguish between crimes and offences, compensatory institutions began to lose their efficacy.

It was also somewhat incorporated into the Penal Law, while several crimes such as murder, theft and rape have no longer been seen as crimes which could be resolved by compensation but are seen as crimes against society and as being subject to punishment. The idea of compensation is closely linked to punishment. The privileges of the wounded were phased out of the Penal Act and the duties to pay damages or indemnities progressively become part of the Civil Process as the State democratized the instruments of penalty. During 19th century penal reform movement, the demand for compensation for victims of crimes was reactivated. Some criminal philosophers strongly favoured reimbursement and reparation. Bonneville, Lombrose, Garofalo were among them. Bonneville was a powerful voice in criminal reform, emphasising the victim's "public responsibility."⁴ Lombroso endorsed the notion of secured transactions, and urged the right recompense for harm to the victim of a crime. It wasn't just a perfect sanction, but also a benefit to the sufferer, he believed.⁵

³ Hugh D: Barlow, Introduction to Criminology (1970), p. 453. See also H. Chadwick, Studies on Anglo-Saxon Institutions (1905).

⁴"Cesare Lombroso" in Mannheim, Pioneers, p.279.

⁵ "Raffaele Garofalo" in Manneheim, Pioneers, p.331. The views of Bentham on 'Pecuniary satisfaction' also provide an interesting comparison (Bentham, Theory of Legislation, 1971, p.282).

His notion was, "*the victim ought to be legally entitled to some of the earnings made by a guilty worker during incarceration.*"⁶ He saw the difficulty in executing such a plan. Garofalo endorsed the 'enhanced restitution' proposal. He believes that damages should be sufficiently evaluated not only for the full compensation of the injured person, but also to compensate the costs paid by the State as a consequence of the offender's negligence. If the resources of the perpetrator are insufficient, the necessary repair should be done by his work.⁷ Florence (1891) also recommends the establishment of a 'Compensation Fund' at the Third International Juridical Congress. The matter was debated in the second part of the century during the 5th International Prison Congress. Although Jeremy Bentham and a number of renowned penologists strongly advocated it remains a distant dream to embrace the idea of the government's obligation to compensate victims of crime. A form of State-sponsored compensation scheme in their criminal justice system was implemented in certain western nations such as NZ (1963), the United Kingdom (1964), and USA (California, 1965).

- **WHAT AMOUNTS TO COMPENSATORY JURISPRUDENCE?**

The idea of compensation for victims of crime is becoming more and more important particularly for victims of wrongdoing by the State. Although this notion is an ancient one, since many decades it developed into more scientific disciplines as well as a criminology area. The contemporary nations classified

⁶ Bajpai, Kausal Kishore, "The History of Compensation of the victims of crime" 2006 Cri. L.J.26 (Jr).

⁷ Singh, S.C. "Compensation and Restitution to the Victims of Crime" 1992 Cri.L.J. 100 (Jr).

as welfare states have understood the necessity of the compensation of the victims of crime and, as part of their overall welfare, they have tapped several compensation systems. Different nations have undertaken the compensation programme for victims of crime.

In Canada, Australia, New Zealand, United Kingdom, there is a fund to provide compensation to victims of crime, under the authority of the board. We, too, require such a fund to help and to ensure 'we care' for the victims.

The expression 'Compensation' refers to the change of the loss. Compensation is something to equate items, something paid for losses, rewards, remuneration or discount. The victim's pain and loss resulting in victimisation is counterbalanced. Three viewpoints may constitute the justification or foundation for remuneration:

1. *“As an additional type of social insurance.*
2. *As welfare measure another facet of the Government/Public assistance of the Unprivileged.*
3. *A way of meeting an overlooked governmental obligation to all citizens.”*

In the development of compensatory jurisprudence in India, several reports from the Law Commission of India and committees on the reforms of the administration of Criminal Justice played a key role. The Indian Law Committee has studied the subject of justice for victims of crime and has also made some reform suggestions in its previous reports (the Indian Penal Code (IPC) 1860 and the Code of Criminal Procedure 1898 and 1973). The Malimath Committee on Criminal Justice Reforms in India (2003) also stressed the need of victims' involvement in criminal justice proceedings and urged rehabilitation and reimbursement of survivors.

There is no comprehensive law or well-designed legislation in India or public policy that allows a victim of the crime to seek restitution or participate in the criminal justice process, either as a matter of right. A thorough study of the Code

of Procedure of 1973 as modified and the Probation of the Offensee Act of 1958, however, indicates that some of the parts included therein are open for justice and recompense for victims of crime. It is also possible to use a number of laws. Sections 357, 358, 359 and 357-A of the Code include the provisions on compensation provided for in the Code of Criminal Procedure 1973. Sections 237 and 250 of the Criminal Procedure Code, 1973 provide for certain further regulations on the issue.

There are rules in various European nations concerning the payment in criminal proceedings of compensation to victims of crime. Justice demands compensation for a person who has suffered. The accused is primarily accountable for the damage the victim has suffered. We have five legislation which allow compensation for the victims of crime to be granted.

1. The Criminal Procedure Code, 1973
2. The Probation of Offenders Act, 1958.
3. The Fatal Accident Act, 1855
4. The Constitutional Remedies for Human Rights Violation
5. The Fatal Accident Act, 1855
6. The Motor Vehicles Act, 1988

• **CONSTITUTIONAL INJURIES AND ITS LEGAL UNDERSTANDING**

A constitutional remedy has been discovered by the apex courts to address the gap in the legal entitlement to monetary reparation of the abuse of several human rights. The Apex Court in the case Rudal Sah v. State of Bihar⁸ has established for the first time that compensation is to be granted in cases where the

⁸ (1983) 4 SCC 141

individual's fundamental right has been harmed and the high courts are authorised to do so "through written jurisdiction and through the annals of human rights jurisprudence the principle of offsetting justice has evolved."

It is obvious that monetary compensation was provided in situations when the legal rights of an individual were injured. Even if such a claim is not defined by the legislation, the courts have utilised that power whenever it is seen appropriate. If the basic right of a person is infringed or the court itself does not create a written petition, the right to a compensation of such a person must enter into force and in such situations he must be paid appropriately.

In *Sebastain v. Union of India*⁹, the Apex court ordered Rs. 1 lakh of costs for the wife of each detained person since the government was not able to provide a habeas corpus petition submitted by women. The Supreme Court may direct the government to confer jurisdiction upon the criminal. In various judgments, where a victim is compensated for by the Supreme Court, whose plight has been brought to the notice either individually or via PIL, in order to protect the rights of victims in our criminal justice system and comply with the constitutional duty. Victims of custodial violence were also given monetary compensation in the Court in several circumstances. The highest court awards compensation of Rs. 1,50,000/- to the deceased's mother who died in the police custody owing to torture to a significant verdict of *Nilabati Behera v. the State of Orissa*.¹⁰ The Court of Apex held in *DK Basu v. State of West-Bengal*¹¹ that, in addition to the private remedy for torture and punishment of misleaders under criminal law for established breaches of fundamental rights, compensation may be granted in accordance with the Supreme Court and High Court of the Public Law.

In accordance with Article 5 of the Universal Declaration in 1948, it is stated that no-one shall be subjected to torture or cruel inhuman or degrading treatment

⁹ AIR 1984 (SC) 1026.

¹⁰ (1993) 2 Supreme Court Cases 746.

¹¹ AIR 1997 SC 610.

or punishment and also in the form of compensation for violations of basic laws, Article 8 of the Universal Declaration of Human Rights and Article 14 of international pact on civil and political rights.

• **CRIMINAL JURISPRUDENCE AND ITS APPLICATION**

In criminal law doctrine of compensation largely covers recompense for the victim of a crime. A victim of a crime is a person who was lost due to an act or omission on the part of the accused. The sufferer suffers not only bodily damage but also emotional and social difficulties. A victim's distress is only aggravated by protracted processes and tiresome courts and the police's misconduct. In pursuing justice for the initial damage, the sufferer is physically again traumatized. The victims' legal heirs and guardians are also defined in the same way.

In accordance with Section 357(3), the law makers provided for in the 1973, Criminal Procedure Code to allow courts to provide the victims of an offence with any compensation. This is shown in the famous Hari Kisan dicta,¹² in which the Supreme Court has granted the sentence of Rs. 50,000 for indemnification. In addition, the lower courts were instructed to "*use the authority to award compensation for victims of offence in such a generous manner as to prevent victims from rushing to the civil courts*"

¹² Hari Kishan and State of Haryana v. Sukhbir Singh & Ors; AIR 1988 SC 2127.

The earliest and oldest Indian statute on compensation for the victims of crime is the Criminal Procedure Code. Sections 357, 358, 359 and 357-A of the Code include compensation measures foreseen by the Code of Criminal Procedure, 1973. Sections 237 and 250 of the Criminal Procedure Code, 1973 provide for certain further measures on this topic. In accordance with Article 357 of the Criminal Procedure Code, 1973, the trial court, the Court of Appeal and the high courts of session shall, in the fine imposed by the Court, be entitled to issue an order for remuneration under the following conditions, in review at the time the judgment was issued:

First:

- a) *“to the complainant, for meeting expenses properly incurred in the prosecution;*
- b) *to a person, who has suffered loss or injury by the offender, when he can recover compensation in Civil Court;*
- c) *to a person entitled to recover damages under the Fatal Accidents Act, when there is a conviction for causing death or abetment thereof;*
- d) *to a bona fide purchaser of property, which has become the subject of theft, criminal misappropriation, criminal breach of trust, cheating, or receiving or disposing of stolen property and which is ordered to be restored to its rightful owner.”*

Second:

- a) *“Where there is an appeal against any sentence or fine, no compensation shall be paid till the appeal period lapses.”*

Third:

- a) *“The Court may issue recompense of crime victims who incurred any loss or harm to be paid for all situations when there is no fine imposed.”*

Section 357 requires a claimable victim or any individual who has incurred loss or harm as a result of the offence to be categories of victims eligible to claim compensation. He can reclaim compensation under the Fatal Accidents Act of 1855 in civil courts, and can seek compensation if a conviction causes death and/or fatal purchases of goods. However, the sufferer is not compensated temporarily or immediately in car accidents.

In 1973, unlike sub-section (1), Sub-section (3) has also been included in the Code of Criminal Procedure authorizing a Criminal Court in its discretion to decide that a certain sum of damages to victims of a crime be paid by compensation, even if fine is not included in the punishment imposed.

With this in mind, the concept of the compensation of the victims of crime has not only been recognised by Section 357(3) of the Criminal Procedure Code, where there has been no fines imposed, but also has been added to the notion of compensation. In the case of *Sarwan Singh v. State of Punjab*,¹³ the Judge said, in granting compensation, *'The aim of the Section is to give compensation payed by the individual to whom damages may be reimbursed from the condemned person even if fine is not part of the penalty.'*

- **EXTRA JUDICIAL RECOMMENDATIONS VIS-À-VIS
LAW COMMISSION OF INDIA**

The law of penalty in India does not provide for reimbursement for any "loss" or "damage" - physically, mentally or psychologically caused by the perpetrator - to the victim of a crime.¹⁴ The Law Commission of India in its 42nd report

¹³ *Sarwan Singh v. State of Punjab*, AIR 1978 SC 1525.

¹⁴ Vibhute K. I.. *Compensating Victims of Crime in India : An Appraisal*, 1990 JILI Vol. 32 : 1, p. 68.

(1981) proposed the incorporation of section 62 into the Penal Code with the aim of placing the compensation out of the penalty imposed in 1860 and giving substantial powers to the Court of Trial to this purpose. The House did not heed the Law Commission's suggestions.

However, the present compensation clause was included in and enhanced in the Code of Criminal Procedure. It was stated in amended Section 357 (545 of the Old Code) of the CPC 1973 that the Court shall record its reasons for not issuing an order to pay compensation, in any case where the new Section 62 of the Penal Code is drawn to it.

However, Justice R. L. Narasimham, Law Commission Member, stated that for some reason Section 357 (Section 545 of the Code of Criminal Procedure, 1898) was entirely unacceptable. Initially, compensation for the aggrieved person may be paid in cash only under Section 545 of Cr. P.C. (357 New Code). No direct compensation for the damage caused is provided for. Second, the section procedure is convoluted, dilatory, and costly and causes the aggrieved complainant a lot of harassment. Furthermore, it does not include situations of the defendants who cannot pay the penalty. The bad effect of short-term incarceration remains, and the complainant may also be unable to gain reparations.

Consequently, Justice R. L. Narasimham suggested the removal from the Criminal Practice Code of Provision 545 (Section 357 New Code)¹⁵ and the

¹⁵ "70A (1) In the case of conviction for an offence against the human body and offence against property, defamation or an offence against privacy, the Court may direct that the person convicted shall pay compensation to the person mentioned in sub-section (4). (2) Such compensation need not necessarily be monetary and it may be in any form which the Court considers to be sufficient recompense to the injured party. But, while passing the order for compensation, the Court shall estimate its monetary value for the purpose of execution of the order. (3) The Court shall not, under this Section direct payment of compensation whose monetary value exceeds the amount of fine which it is empowered to impose. (4) An order under sub-section (1) may be made— (a) In addition to any other punishment to which the person convicted may have been sentenced. (b) In substitution of fine, where the offence not being a capital offence, is one punishable with fine. (5) The compensation under this section may be directed to be paid— (a) to any person who has incurred expenses in prosecution for defraying expenses properly incurred; (b) to any person for any loss or injury caused by the offence, when compensation is in the opinion of the Court,

inclusion in Indian Penal Code of a new section for improving the legislation on the restitution to the criminal. It essentially emphasised that the prisoner had compensated for the fine he had been imposed for committing an offence, property, diffamation of or a conspiracy to conduct such an offence or obstruction of justice.

Furthermore, it favours recompense for the victim by appealing to the criminal to reward the victim in monetary or other terms for imposing a statutory responsibility. The second method not only demonstrates equal care for victims of crime but also indicates that victims' recompense is really and reasonably acceptable. Sadly, in the 1860 Indian Penal Code, all of the Law Commission proposals found no home.

The 156th Law Commission Report, 1997

In 1997, the 14th Law Commission reiterated, in its 156th Report on the IPC, its previous suggestions in 1994 for establishing a 'victim compensation model' for individual states in its 152nd report and the 154th Report in 1996 on the Cr.P.C. and realised that paying compensation as aggravating circumstance requires not only a survey on a variety of situations, but also some approximately.

The 226th Law Commission Report, 2009 (Suggestions and recommendations related to compensation under Indian Penal Code, 1860)

For its considering in an ongoing proceeding filed by one Laxmi in W.P. (Crl.) No. 129 of 2006 regarding "Acid Attacks as specific offences under the Indian Penal Code and the Contracting Law for Crime victims," the Committee on

recoverable by such person in a civil Court; (c) in the case of conviction of any offence for having caused the death of another person or of having abetted the Commission of such offence, to the person who are, under the Fatal Accident Act. 1855, entitled to recover damages to the person sentenced, for the loss resulting to them from such death; or (d) In the case of a conviction for any offence which includes, theft, criminal misappropriation, criminal breach of trust, or cheating or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, to any bona fide purchaser of such property for the loss of the same, if such property is restored to the possession of the person entitled thereto."

Legal Affairs has submitted its report to the Supreme Court of India In order to compensate victims of accidents, rape, sexual assaults, kidnappings etc., the law committee advised a separate act to be introduced. It proposed a wider law to address the concerns of the victims of various crimes, who are in need of rehabilitative and survival reparation.

The Malimath Committee Report, 2003¹⁶

In the year 2003 the Malimath Committee also deepened the concept of 'victim justice' and recommended the legislature to create law on this topic in its Report on the Reforms on the Criminal Justice system in India while presenting the report in the month of March 2003. Like the constitutional court, the Malimath committee also felt that compensating victims of crime would be a State obligation and proposed a "financial assistance law" that could be administered by the Legal Services Professional courtesy under the Legal Services Authority Act of 1987. The Advisory board also felt that trying to compensate the victims of crime was a state obligation. It sets out also the kinds of offences in which reparation can be granted and cancelled.

¹⁶ Government of India, committee on Reforms of Criminal justice System, 2003 p.271

• **JUDICIAL RESPONSE TOWARDS PAYMENT OF
COMPENSATION TO THE VICTIMS**

In the gradual evolution of the victim compensation legislation via a judicial approach, the sections of the Criminal Procedure Code take a significant role. In accordance with Section 357(1), the Court has a very limited discretion to grant compensation out of the fine only if imposed on the criminal. Nevertheless, under paragraph (3) of Article 357 the Court should have a considerably greater discretion, only if the fine is not in the sentence. As suggested in its 41st Report by the Law Committee in its revised Code for Criminal Procedure in 1973, Section 357 was, without doubt, added to sub-section (3).

If the Division is just read, the Court's authority is infinite, even if the judge can virtually order more than the fine it can charge. The appellant was convicted under Section 304-A, Indian Penal Code of 1869 in *Nand Ballabh Pant v. State (Union Territory of Delhi)*¹⁷. He has been punished with a Rs. 500/- fine for two months' harsh jail term. The punishment was lowered to one month upon appeal to the Court of Apex but the penalty was raised to Rs. 1000/- in order for the deceased's wife to get the same amount as reparation.

The Apex Court of India has voiced its dissatisfaction in another instance of *Palaniappa Gounder v. State*¹⁸ of the combination of the punishment with the death penalty and even the death sentence. In that instance the High Court decreased the sentencing of the term to life imprisonment by the court of law and imposed on the delinquent payable to the deceased's heirs a fine of Rs. 20,000/-. The Indian Supreme Court held that payment should not be exorbitant.

¹⁷ *Nand Ballabh Pant v. State (Union Territory of Delhi)* AIR 1977 SC 892.

¹⁸ *Palaniappa Gounder v. States* AIR 1977 SC 1323.

The Court also ruled that firstly the decision as to what damage should be given and after that the penalty larger than the indemnity should be imposed is not appropriate.

In a similar instance of the *Sarwan Singh v. State of Punjab*,¹⁹ where his two brothers and their children were murdered in an incident. All perpetrators were convicted by both the Trial Court and the High Court under Penal code of the Indian Code, as referred to in Section 149. The Apex Court set aside the conviction pursuant to Article 302, as set forth in Article 149, and found the appellant guilty in accordance with Section 305(1) of the Penal Code, and punished the appellants with the same payment as compensation to the widow of that person for five years of severe imprisonment in accordance with Article 3500/-. The Court remarked that during the granting of the required compensation and held that,

"the object of the Section, is to provide compensation payable to the persons who are entitled to recover damages from the person sentenced even though fine does not form part of the sentence."

In *Guruswami v. State of Tamil Nadu*²⁰ the Supreme Court noted that it was reasonable for the deceased's relatives to get adequate compensation in the event of murder. The accused was immediately convicted of killing. His dad and sibling were the casualties. In accordance with Section 302, Indian Penal Code, two courts convicted the accused and each court condemned him to death. The Apex Court confirmed the appellant's judgment but lowered the punishment to life in prison. The Apex Court has imposed in *Prabhu Prasad Sah v. State of Bihar*²¹ a Rs. 10,000/- fine on the offender payable to dead heirs. "There is numerous dimensions outside conviction, conviction, acquitting and innocence

¹⁹ *Sarwan Singh v. State of Punjab*, 1978 Cri LJ 1598.

²⁰ AIR 1979 SC 1177.

²¹ AIR 1977 SC 704: See also *Sukhdeo Singh v. State of Punjab*, 1982 SCC (Cri) 467.

to criminal justice" has been noted by the Supreme Court. The victim must not be forgotten but, as much as possible, rehabilitated."

In another instance of *Rattan Kumar v. Ranjit Singh*²² who understands the suffering of the sufferer, announced the insurance payment as well as pay it out of fine since compensation does not bear parentage and is not to be likened to medical bills. In the judgment of *Hari Kishan and the State of Haryana v. Sukhbir Singh & Ors*,²³ the major breach of the compensatory jurisprudence occurred through a ruling from the Judiciary, recommending that all courts "*exercise the power of compensation for the victims of an offence under Article 357 of the Criminal Code, 1973, in order to achieve the aim of social law*"²⁴ This is an essential clause, although it was rarely cited by courts, probably because of its ignorance. It enables the Court to provide the victim compensation during the ruling.

The Court may further order the guilty to pay, in addition to punishment, some amount to compensate the victim who was subjected to the acts of the defendant. This ability to award compensation may be seen not only as an accompanying factor in other judgments but is also supplementary to them."²⁵ The Court again highlighted the need of a broad and reasonable use of power in this area. Taking account of facts such as the purpose of the crime, the monetary benefit the offender has probably earned and his way of paying the fine, this should not be exorbitant. In the verdict of *Babu Raghunath Naik v. Mrs. T. P. Fauna*²⁶, the Goa Justice Commissar decided that under Section 3 of the Probation of Offenders Law the accused was directed to release him as he had engaged in cocoon tree robbery with the aim of utilising the same methods as sifters for his hut building.

²² AIR 1983 P & H 160.

²³ AIR 1988 SC 2127.

²⁴ Balaji v. State of U.P., 1995 Cri LJ 3217.

²⁵ Palaniappa Gounder v. Tamil Nadu. AIR 1977 SC 1323.

²⁶ 1967 Cri LJ 1005.

Whereas the defendant was released following a proper notification, the Judicial Commissioner provided him with the advantage of the Act of Supervision of Offenders, in the case of the offence and the character of the offender, and directed that he give the complainant a reimbursement of Rs 50/. In yet another case involving Mangilal v. State of Madhya Pradesh, the Apex Court stated that, *"a court is required to hear an accused before fixing quantum of compensation."*²⁷

• **WOMEN VICTIM AND COMPENSATION**

The court has reacted vigorously to women who have suffered violations because they require genuine, spiritual, philosophical, legal and political aid to overcome trauma. Some of the major decisions on compensation for the victims of rape Husband Rs. 1 lakh and Rs. 36,000 was to be given as a compensation for Mukumda Martand Chatnis v. Madhuri²⁸ for the sling of the mud and the murder of the wife as the lady who was the victim. The Court Ordered the State of U.P. to pay Rs. 2 50,000 as damages to each victim of the violation in Dudalure M.J. Cherian v. Union of India.²⁹

At Rupaldeo Bajaj v. K.P.S.³⁰, Gill, the Supreme Court set off the offender's accountability and provided the victim with financial compensation, as it was "outraging his modesty" that Mr. Gill's claimed conduct slapped Ms. Bajaj's bosom. Furthermore, it was ruled that it was not just an attack on women's natural sense of decency, but also an offence against women's dignity. The

²⁷ AIR 2004 SC1280.

²⁸ AIR 1992 SC 1804.

²⁹ 1995 SCC (Cri) 925.

³⁰ (1995) 6 SCC 194.

Supreme Court of India ruled in the Delhi Domestic Work Forum Women v. union of India³¹ that the government had to set up within six months a criminal workers' compensation board for victims of rapes. The Supreme Court had proposed that this board compensate if a judgment is made or not.

The Apex Court of India while explaining the situation in length and breadth held that,

“-“It is necessary, having regard to the Directive Principles contained under Article 38(I) of the Constitution of India to setup Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example are too traumatized to continue in employment. Compensation for victims should be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction takes place. The board will take into account pain suffering and shocks as well as loss of earnings due to pregnancy and the expenses of the child but if it occurred as a result of rape...”

The High Court repeated the aforementioned ruling in Bodhisattwa Gautam v. Shubhra Chakraborty³² again and also stated that court cases were brought to grant interim compensation, which also had to be paid for under the system. In the event that the situation of these cases was identical with the circumstances of death and serious hurt in Utrkhand Sanghrash Samiti, Mussorie v. State of Uttar Pradesh³³ and other compensations to victims of females abused and raped, and the judge ruled that of these women who were both abused and raped, the same remuneration should be granted to them as for those victims of dying.

³¹ (1995) 1 SCC 14

³² AIR 1996 SC 922.

³³ (2000) 2 SCC 465.

As restitution to Hmt Hanufa Khaton, the Chairman, Railways Board and Others, Ms Chandrima Das and Other considered the rape to not be a mere infringement on an individual's ordinary law but an infringement of fundamental rights. A study of acid attack incidents reinforces the necessity for a victim compensation programme as a matter of urgency. Victims of acid attacks have to endure several operations that cost Lakhs of Rupees, as mentioned before. They need treatment as a matter of urgency since they typically need financial assistance. You may not be able to look for a job.

A different laws was proposed by the National Women's Commission (NCW) to deal with the acid attack crime and the proposed law proposed to create the National Acid Attack Victims Aid Board for Victims to support the victims of the assault with the goal of maintaining medical and other services, like mental c The committee has also had the duty of recommending methods to the Government for regulating and controlling the manufacture and sale of acids, among other things. Within 30 days, the Commission has been entrusted with the option of directly giving the hospital interim financial aid up to Rs. 1 Lakh. Besides other problems, the principal difficulty with N.C.W's proposals is that the purpose of the board is restricted to just acid attacks.

The victim of rape is subjected to numerous difficulties, including a mental shock, a loss of income owing to pregnancy and costs of delivery. In Indian culture, however, even though she is the victim rather than the criminal, a raped female is seen lowly. Article 21 of the Constitution Of india, which talks about the right to life and personal freedom, gives a female right to indemnification. The Supreme Court decided that even in the middle of the trial or at the end of the trial a woman can be paid. In accordance with Article 38(1) of the Constitution of India, the Supreme Court even proposed the creation of the criminal injury compensation board whose purpose was to pay and to give relief for the sufferers. No such committee was created, though.

In the case of the most important *DK Basu v. State of West Bengal*,³⁴ the Supreme Court decided that a victim of custody is entitled to compensation since the State official has infringed her rights to life. In another instance, the Court of Justice decided that, while the trial was not concluded, the Court of the session had the jurisdiction to award compensation to the victims. Indeed, the Supreme Court declared that "*Even a prostitute has the right to privacy, and no one may violate her just for being a lady of good character,*" in the case *Maharashtra v. Madhukar N. Mardikar*.³⁵

- **CONSTITUTIONAL REMEDIES AS FUNDAMENTAL RIGHTS UNDER ARTICLE 32**

Recognized principles of law being implemented by ordinary civil courts are compensation against victims. The law of torts allows the victims to claim the harm to the property or goods that they suffer. It takes decades for the victims to get a compensation decision, which causes them so much misery, through civil courts. The establishment in view of the concept of human rights of compensating law is a good indication that

³⁴ 1997 (1) SCC 416.

³⁵ AIR 1991 SC 207.

the court is committed to defending the right of everyone to life and to the freedom of persons.

Many international treaties on human rights are daring and revolutionary moves towards ensuring freedom, equity and justice and are concerned about their successful implementation. While the notion is new, the content has not been recognised and such rights have been recognised throughout centuries and formed part of numerous nations' constitutional framework. The right to enforce such rights has been recognised in India under Part III of the Constitution.

The right to move the Supreme Court through proper processes for basic rights enforcement is provided for in Article 32(1). By Article 32(2) the Supreme Court has the right, and the ability to issue any proceedings necessary in a certain instance, to invent any method for the application of basic rights. The Supreme Court can even provide remedial help in view of this fundamental clause, which might involve payment in "suitable situations"

A question was brought before the Supreme Court at *Khatri(II) v. State of Bihar*³⁶ concerning the granting of financial compensation by written competence;

In the words of Justice Bhagwati, it can be understood as,

"Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty."

³⁶ (1983) 2 SCC 266

The subject of paying the victim of government illegality was left open in *Sant Bir v. State of Bihar*.³⁷

The Court also held in *Veena Sethi v. State of Bihar*³⁸ that the question of whether the petitioners are allowed to indemnify the government for the violation of the right contained in Article 21 remained to be examined.

In view of the opinions expressed by the Court in the foregoing instances it may be stated that the Court has stated its concern to safeguard the right to life and freedom from the lawlessness of the State, but does not give compensation in case in fact. In *Khateri Sant Bir and Veena Sethi*, which had blossomed with such strong development as ultimately to allow the Court to maintain that it was responsible to pay recompense, the first seed was planted to make recompense for the infringement of the rights included in Article 21. The Supreme Court's approach in *Rudul Sah v. State of Bihar*³⁹ dynamic motion led in compensating jurisprudence for the breach of the right to personal freedom. The Historic Advancement of Civil Liberties Case Law by the Supreme Court of India granted monetary compensation to an unhappy victim of state lawlessness by the Bihar State for holding him under unlawful custody for more than 14 years following a death sentence acquitted him.

CONCLUSION

In the gradual evolution of the victim compensation legislation via a judicial approach, the provisions of the Criminal Procedure Code take a significant role. In light of the entire scenario for compensating court case law, it is necessary to

³⁷ AIR 1982 SC 1470

³⁸ 1982 (2) SCC 583

³⁹ (1983) 4 SCC 141

broaden the scope of the criminal justice system in view of the general shift in methods, thought and circumstances. When delivering justice, the victim should not be forgotten. The victim in the criminal justice system would remain neglected, if notwithstanding the legislative period, specific measures on consumer protection have been adopted.

It concludes that until Section 357 is interpreted, it will contradict the entire aim underlying the insertion of the provision if the Court is obliged to apply its thoughts to the issue of compensation. The harm produced by the conduct of the perpetrator should be appropriately compensated for the victim. This would be an effective way of achieving the goals of justice. In instances where an amendment does not form part of the punishment the authorities should be allowed to impose reparation. The Court's discretion is to have a legislative mandate requiring it to issue compensatory orders in all appropriate instances and it may become compulsory to record grounds for doing so when it chooses not to do so.

In order to seek recompense for loss or harm, victims should be permitted lawfully to participate in the criminal proceedings against an offender. Such a clause is undoubtedly going to increase the use in compensating victims of crime of the statutory provisions, because it would almost mean that payment must in every case be taken into account.

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