

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 2

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Compensation to Victims in Criminal Justice System in India: A Critical Appraisal

DR. K.V. RAVI KUMAR¹ AND K.V. RATNAKAR²

ABSTRACT

Criminal law which respects the social ambitions and norms of the society is designed to punish as well as to reform the criminals, but hardly takes note of the by-product of crime, its victims. The plight of victims of crimes has always been of interest to society. This is evidenced by the importance given to the victim by the media, which attempts to highlight the trauma that the victim suffers, sensationalising the same in the process. It is to be noted that in the entire process of administration of the criminal justice system, the victims finally end up getting no relief for the damage suffered by them. The case for rehabilitation and compensation to victims of crime rests primarily on the criminal who inflicted injury against the person or property must compensate for the loss and secondarily on the State which failed to protect the victims must pay the victims for the loss due to him. Criminologists' early concentration was solely on the issue of punishment, but this shifted when they realised that the victim of crime gets nothing out of the entire criminal justice system or gets so-called satisfaction from seeing the offender punished. As a result, jurists, prosecutors, and others in all countries began to devote their whole attention to the cause of the victim in the form of compensation, and a dispute erupted regarding the manner, means, and extent of compensation. Thus, victim compensation is one of the major aspects of reparation or restoration of the harm or injury caused to the victim due to the commission of the crime. Monetary assistance, in one way or another other, has always benefitted the victims in the diminution of their sufferings. Thus, in this paper, we endeavoured to address the intricacies involved in granting the compensation to victims.

Keywords: *victims, compensation, relief, criminal law, basic principles.*

I. INTRODUCTION

The purpose of criminal justice is to protect the rights of the individuals and the State against the intentional invasion by criminals who violate the basic norms of the society. In a modern welfare State, this protection is sought to be achieved and ensured by punishing the accused in accordance with the provisions of law. It is to be noted that to ensure that the innocent persons

¹ Author is an Assistant Professor at ICFAI Law School, IFHE, Hyderabad, India.

² Author is a Research Scholar at P.G. Department of Legal Studies & Research, Acharya Nagarjuna University, India.

may be victimised, the accused has been granted certain basic rights and privileges to defend him and prove his innocence before he is condemned. In case, the accused is found guilty he is punished and kept in prison with an object of reforming the accused and ensured proper rehabilitation after his release from the jail. The criminal law reflects the social ambitions and norms of the society, is designed to punish as well as to reform the criminals. But, unfortunately, the law and establishment hardly take any notice of the by-product of crime, its victim³. It is pertinent to mention that the poor victims of crime are entire overlooked in misplaced sympathy for the criminal. Under the criminal jurisprudence, that the victims of crime do not attract due attention. 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 legislature⁴.

Criminal Law has always dispirited the acts or omissions which in general can affect right in rem and violators have always been punished with the strict penalty but the crime rate is not falling and State is in regular to pursuit social unanimity and peace in society. The initial focus of criminalist was only on the aspect of punishment but the focus started shifting when they confronted with the fact that the person who is the victim of crime is getting nothing out of the whole process of the criminal justice system or is getting a so-called satisfaction by seeing the offender punished, and in all countries started giving their full scrutiny to the cause of victim in form of compensation. It is pertinent to mention that while addressing to Academics and students of law in a lecture by Hon'ble Justice of Apex Court A.K. Patnaik, on the topic of Compensation to Victims of Crime and rehabilitation of convicts after imprisonment, he said that when a serious crime is committed, the State immediately steps-in, to ensure that the accused is apprehended and after investigation he is prosecuted and if found guilty, he is punished by imprisonment or death. All this is done by the State to prevent similar crimes being committed in society in future. Punishment of the convict also gives satisfaction to the victim of the crime or his near relatives that retributive justice has been done⁵.

The contribution of the judiciary to redress the claims of victims of crime in no less significant. The higher courts have played an ascendant role in assuring compensatory justice to the victims of the crime. While apportioning such compensatory relief, they have exercised with due care and caution to ensure that people's faith in the judicial process which is not weary and victims

³ Gaur K.D., 'Justice to Victims of Crime', *Indian Bar Review*, Vol. 29 (3&4), 2002 at p.255

⁴ *Ratan Singh v. State of Punjab* (1979) 4 SCC 719

⁵ Patnaik A.K., 'Compensation to Victims of Crimes and Rehabilitation of Convicts after Imprisonment', *Criminal Law Journal*, 2011, at p. 97

protection rights are not denied to them. Criminal law has always prevented acts or omissions that can harm right in rem in general, and offenders have always been punished harshly, but the crime rate is not decreasing, and the State is constantly striving to maintain Social Cohesion and Peace in Society. Criminologist's early concentration was solely on the issue of punishment, but this shifted when they realized that the victim of crime gets nothing out of the entire criminal justice system or gets so-called satisfaction from seeing the offender punished. As a result, jurists, prosecutors, and others in all countries began to devote their whole attention to the cause of the victim in the form of compensation, and a dispute erupted regarding the manner, means, and extent of compensation⁶.

II. CONCEPT OF COMPENSATION TO VICTIMS OF CRIME

The etymological meaning of the phrase Victims of Crime suggests that it will encompass that any one suffering physical, emotional or financial harm as a direct result of a crime. In this regard, reliance can be placed upon U.N. General Assembly Declaration of Basic Principles of Justice for Victim and Abuse of Power adopted in November, 1985, which Articles 1 and 2 gives exhaustive definition of the phrase 'Victims' means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power⁷. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization⁸.

III. EVOLUTION OF CONCEPT OF COMPENSATION TO VICTIMS OF CRIME

The ancient Indian history attests to the notion that victims of crimes are entitled to adequate restitution in the form of recompense for their injuries. The evolution and the concept can be traced both historically and theoretically. Historically, the concept of victims compensation is not, however, a product of 20th century. It is to be noted that the Hammurabi Code contained a

⁶ Arryan Mohanthy, 'Victim Compensation' Law Insider, March, 2022

⁷ Article 1 of United Nations General Assembly Declaration, Adopted by General Assembly resolution 40/34 of 29 November 1985.

⁸ Ibid.,

provision for the compensation of crime victims⁹. In crude sense, the victimology was not only part of Hammurabi's Code but also existed in developed sense in Greek City-States.

If the King could not restore the stolen things or reclaim the price for the owner by apprehending the thief, it was deemed his obligation to pay the price from his personal treasury, which he might then recover from the village officers who were responsible for the thief's escape due to their carelessness. Reparation or compensation as a form of punishment has been documented in India since ancient times. Compensation was recognized as a royal right in ancient Hindu law throughout the Sutra period. The law of Manu mandates the offender to compensate the victim and pay for medical expenses if the victim is injured, as well as satisfaction to the owner if assets are harmed. The assailant must pay the costs of a perfect cure or, if he fails, both full damages and a fine in all situations of cutting a limb, injuring, or obtaining blood¹⁰. It demonstrates that victim compensation was never an alien concept in the country's justice delivery institutions.

IV. COMPENSATION TO VICTIMS: AN INTERNATIONAL PERSPECTIVE

At the international level, a declaration that the responding State has or has not violated a guaranteed right or the rights of victims forms the heart of the judgment in all international human rights complaint procedures. The United National Organs and the regional Commissions issue such a declaration as the basis for recommending measures that the State should take to remedy the wrong. There are three types of compensatory damages nominal, pecuniary, and moral. Generally, these damages provide for past physical and mental suffering, future physical and mental suffering, medical expenses, loss of earnings and earning capacity, incidental out of pocket expenses, including travel, nursing care, property injury or loss, permanent disability and disfigurement.

In the case of *Berry*¹¹, an action involving death, appropriate compensatory damages would include medical and burial expenses, pain and suffering before death, loss of earning based upon the probable duration of the victim's life, had the injury not occurred, the victim's loss of consortium, and other damages recognized in common law tort actions. The problem of calculating damages is complex. A court considering the case of a victim who suffers a permanent disability as a result of official torture can calculate the costs already incurred, such

⁹ Lamborn, 'The Propriety of Governmental Compensation for Victims of Crime' 41 *Geo.Wash.L.Rev.* 446 (1973)

¹⁰ Aryan Mohanty, 'Detailed Analysis of Victim Compensation in India', *Law Insider*, 2022 <https://www.lawinsider.in/columns/detailed-analysis-of-victim-compensation-in-india> - Last visited on 03/03/2023

¹¹ *Berry v. City of Muskogee*, 900 F-2d, 1989

as medical expenses, therapy charges, damage to property and lost earnings prior to judgment. Justice also demands that the court consider lost future earnings and opportunities, and other losses which require prediction of future events, including loss in enjoyment of life. Reduced life expectancy may be claimed, although national jurisdictions are split on which this recoverable.

Apart from the above, there are many countries, which have passed specific legislations for providing the Compensation to the victims of crimes. To name a few of them, for example Germany¹², France¹³, Italy¹⁴, England¹⁵, United States of America¹⁶, Australia¹⁷, New Zealand¹⁸. It is to be noted that the purpose of the above legislations in various countries is to ensure that victims are not denied some compensation by reason of impecuniosity's of the offenders or failure to trace or convict the offenders. It is to be noted that this U.N. declaration introduced several different concepts like introducing a definition as to who qualifies as a 'victim' which talks about compensation and giving reparations as well as strengthening the judiciary's mechanism. This was followed by the Declaration on the Protection from Enforced Disappearance adopted by the UNGA in its resolution passed on 18th December 1992. This was also followed by another resolution on the same issue passed by the UNGA which was the 'International Convention for the Protection of All Persons from Enforced disappearance' which essentially aimed to protect individuals who were considered to have been arrested, detained, abducted or deprived of any liberty by the agents of law themselves – this included police brutality and custodial brutality. Here, in summary, the right to justice, right to information regarding the investigation, and the right to compensation. Here, the convention includes provisions for restitution, information satisfaction, restoration of dignity, rehabilitation, compensation. The latest resolution regarding the subject is the issue of victim

¹² According to the German Code of Criminal Procedure, 1877, the victim has a legal right to claim damages from the accused against a criminal act done by him.

¹³ Victims claim for restitution may be entertained simultaneously together with criminal proceedings. A Board was constituted within the jurisdiction of Court of Appeal for dispensing the compensation

¹⁴ The victim may claim compensation either in a civil court or in criminal court against the accused for both physical as well as mental agony including moral injuries. A Fund was established in Ministry of Justice for helping and assisting the victims of crime.

¹⁵ Compensation to victims of crime may be paid either by the accused or by the State. He may also get compensation in case of personal injuries by the Criminal Injuries Compensation Board irrespective of the decision of the court against the accused. Compensation and Restitution to Victims Act, 1970, there is a criminal Injuries Compensation Board which may award compensation from State Funds to a person who has sustained personal injury from a crime of violence.

¹⁶ Compensation is dealt with separately by the Federal and State Governments since they have their own set of criminal legislations. One important feature of the State laws is that apart from the victim i.e. the persons who are killed, injured as a result of crime, even police are also entitled to compensation

¹⁷ Criminal Justice Act, 1988 which provides for immediate relief to the victims.

¹⁸ Compensation of persons injured by certain Criminal Acts and Dependents of Persons Killed by such Acts, Act, 1963 that provides for state compensation to victims of crimes of violence.

protection which was in the form of guidelines, called the ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’¹⁹ Besides, the Organised Crime convention in Article 14 and 25 and the Trafficking in Persons Protocol Article 6 (6) make specific reference to and provide for compensation at an international level²⁰.

V. VICTIMS COMPENSATION – NATIONAL PERSPECTIVE

In India, the first step towards victim compensation have been taken by the Indian Judiciary. The first few instances include judgment by Justice Krishna Iyer, as in the case of *Ratan Singh v. State of Punjab*²¹ It is the weakness of our jurisprudence that the victims of the crime, and the distress of the dependents of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law! This is a deficiency in the system which must be rectified by the Legislature”. Compensation has been employed as a stringent measure throughout history. Ancient societies never conceptually separated the realm of civil and criminal law, but mechanically required the offender to indemnify the victim and/or the family for any loss caused by the commission of the offence. However, the primary purpose of such compensation was misplaced since it was meant to protect the offender from violent retaliation by the victim or the community as opposed to compensating the victim. With time, principles of law gradually deli anted the allocation of punishment in the case of civil tort and criminal offences. Compensation was then incorporated as a victim’s right and opposed to a remedy in the case of a crime. Thus, criminal law was rid of the burden of compensation to reintegrate victims since the position of law was that criminal justice was either reformatory or retributive form, for the offender, as opposed to being recuperative concerning the victim. This conventional position has in recent times undergone a notable change, as societies world over have increasingly felt that the legislatures and the courts alike were neglecting victims of the crimes. However, a scheme based on compensation by the offender to the victim is particularly problematic because the offender must be apprehended and convicted, and it is also necessary for the victim to be able to afford the same resources.

VI. VICTIM COMPENSATION IN VARIOUS LEGISLATIONS

a) Under Code of Criminal Procedure:

In India, victim’s compensation has always been the weeping beggar at the door of criminal

¹⁹ Romani, C. ‘International law of victims’, 220, Max Planck Yearbook of United nations law, Vol. 14, p.219-72. (Koninklijke Brill N.V, 2010)

²⁰ United Nations Conference room paper, on National Approaches to compensation of victims of trafficking,

²¹ 1979 SCC (4) 719

justice system. The concept of victim's compensation though not specifically mentioned and recognized in the Criminal procedure Code of 1899. However, it had its own short comings as the right of a victim to receive compensation was available only where a substantive sentence of fine was imposed. There is neither a comprehensive legislation nor ingenious statutory scheme or a public policy in India either allowing a victim of crime to seek compensation from the offender or state or to participate, as a matter of right, in the criminal justice process. However, a careful reading of provisions of Code of Criminal Procedure, 1973 as amended on date and that of Probation of Offender's Act, 1958 reveals that a few sections contained therein can be invoked to provide justice and compensation to the victims of crime. The provisions of Criminal Procedure Code concerning victim compensation occupy a prominent place in the progressive development of the law relating to victim compensation through judicial approach²².

It is pertinent to mention that the 41st Report of the Law Commission of India was submitted in 1969. The report stated that the significance of the recoverability of compensation should be enforceable in a civil court akin to the public remedy available to tort. The gravity of compensability was earlier demarcated by the use of the word "substantial" which excluded cases where nominal charges are recoverable. However, the Law Commission debated against the demarcation since the discretion to apply the provision in cases was used scarcely by the courts in directing compensation for victims. On the basis of the recommendations made by the Law Commission in the above report, the Government of India introduced the Code of Criminal Procedure Bill, 1970,²³ which aimed at revising Section 545 and re-introducing it in the form of Section 357 as it reads today²⁴. The CrPC consequently incorporated the changes proposed in the said Bill of 1970. In the Statement of Object and Reasons it stated that Section 357 was "intended to provide relief to the poorer sections of the community" whereas, the amended CrPC empowered the court to order payment of compensation by the accused to the victims of crimes "to a larger extent" than was previously permissible under the Code.

²² Gowda Sanjeeva G.S., 'Compensation to Victims of Crime in India : An Overview' *International Journal of Law, management and Humanities* Vol. 3 Issue No.2, 130, at p.134

²³ The Statement of Objects and Reasons underlying the Bill was as follows: "Clause 365 (now Section 357) which corresponds to Section 545 makes provision for payment of compensation to victims of crimes. At present such compensation can be ordered only when the court imposes a fine; the amount is limited to the amount of fine. Under the new provision, compensation can be awarded irrespective of whether the offence is punishable with fine or fine is actually imposed, but such compensation can be ordered only if the accused is convicted. The compensation should be payable for any loss or injury whether physical or pecuniary and the court shall have due regard to the nature of injury, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors."

²⁴ Vibha Mohan, 'Revisiting Victim Compensation in India', http://docs.manupatra.in/newsline/articles/Uplod/6F5E12E5-2A56-49A9-BF1B-CBE1DF4F8726.2-F__criminal.pdf, last visited on 08/03/2023

Sec. 375(A)²⁵ was added in CR.P.C through Amendment Act, 2008. It has been inserted in the Code in which casts a responsibility on the State Government in coordination with the central government to prepare a scheme to pay compensation to the victims or their dependants. In regard to the implementation, there are several problems that plague the implementation of the law as envisioned under Section 357A. This is primarily because of the allocation of responsibility between the state government for legislation, the DLSA and other instrumentalities for implementation. Most states tend to forego the notification of a dedicated Victim Compensation Scheme under Section 357A since they place reliance on other relief funds that compensate victims. The primary problem in realizing nation-wide accessibility of victim compensation is the failure of states to notify a pragmatic and effective Victim Compensation Scheme under Section 357A. Further, there is a disparity in the quantum of compensation awarded by different states for the purpose of different crimes. There is a lacuna in terms of the specificity of grounds for compensation that has been left vulnerable to the flexibility of interpretation. In terms of disbursement, there is no clarity with regard to the stage when compensation can be awarded including interim compensation and the need to attend to recurring expenses by the victim²⁶.

It is to be noted that with regard to payment of compensation by the State for crime victims. In order to understand the concept of compensation by the state for victims of crime, one must pay attention to the relationship between the society, the victim and the offender. Several theories have been put forward as to why the state should assume responsibility for the harm caused to victims of crime such as social contract theory, legal liability theory, accountability theory, etc. Social contract theorists believe that when individuals surrender some of their freedoms and submit themselves to the authority of state, the state is under an obligation to protect their rights and pay compensation when their rights are violated. Legal liability theory enjoins the state to compensate crime victims because the state owes the subjects the duty to protect them against crime and the state has failed in this duty if it does not prevent crime, hence liable to pay compensation. The accountability theory attributes a symbiotic relationship between the state and the citizen. Accountability is the state of being answerable, liable or accountable. When there exists a relationship between individual and state, the state is accountable and liable to compensate victims of criminal behaviour²⁷.

²⁵ Central government with the help of state governments should prepare a scheme for victim compensation to provide funds to the victims who have suffered death loss damage injury to restore their status of life. This provision would work as a helping hand for victim compensation

²⁶ Supra note at 22 p. 100

²⁷ Padma T., 'Victim Compensation Scheme: Robust Or Frail - A Study With Special Reference To Telangana State Victim Compensation Scheme -2015', *International Journal of Multidisciplinary Educational Research*, Vol.

b) Compensation under Probation of Offenders Act, 1958:

Under section 5(1) of the Probation of Offender Act contains provision regarding compensatory claim. As stated in this section, the court directs the release of a wrongdoer under section 3 or section 4 of the Act, if it is deemed fit, it may further direct the accused to further pay to the victim the amount, as the court deems fit and the cost of the procedure.

c) Compensation under Motor Vehicle Act 1988 :

In case of death or injury in case of vehicle accident or their representatives can claim compensation from the wrongdoer under Sec. 5 of Motor Vehicle Act 1988. These cases can be tried under trial court.

d) Compensation under the Constitution of India, 1950:

Since the time of the Indian Constitution's plan, systems and regulations for victim compensation have been growing. The Indian Constitution also includes explicit protections for victims of wrongdoing. The position is supported by Articles 14 and 21 of the Constitution. The Supreme Court developed the principle of payment of compensation to the victim of crime on the grounds that it is the duty of the welfare state to protect fundamental rights of the citizens not only against the actions of its agencies, but also on the grounds of humanitarianism and social welfare, duty to protect its subjects, equitable justice, and so on²⁸.

Judiciary plays a very crucial role in rectifying the claims of the compensation of the victims. There has been very important role of high courts in awarding the compensatory justice to the victim suffered from loss or damage. Some landmark judgments that ensures compensatory justice to victims and its shows the concern of judiciary in that field²⁹. Victim compensation was a unique notion devised by the Indian judiciary to achieve justice. By providing alleviating means to remunerate victims, the modern concept of justice has demonstrated terrible concern.

It should be mentioned that the Hon'ble Court developed indemnification by the State for the action of its official against the English legal idea of 'King can do no wrong,' as stated in the case of *Nilabati Behera v State of Orissa*³⁰ that the doctrine of sovereign immunity applies only in the case of a Tortious act by a Government Agent, not when basic rights are violated, and

11, Issue No. 5, 2022, at p. 25

²⁸ Arryan Mohanty, 'Detailed Analysis of Victim Compensation in India' Law Insider, 2022, <https://www.lawinsider.in/columns/detailed-analysis-of-victim-compensation-in-india>, last visited on 11/03/2023

²⁹ Bhanu Pratap Singh, 'Victim Compensation Scheme in India', International Journal of Legal Science and Innovation' Vol.2 Issue No.2, 2020 at p. 721

³⁰ 1993 AIR 1960

thus, in a sense, this doctrine is not applicable in criminal cases (unless fundamental rights are violated).

The most famous case is *Rudal Sah v State of Bihar*³¹, in which the Hon'ble Supreme Court ordered the state to pay Rs 35,000 in compensation to Rudal Sah, who was imprisoned for 14 years despite his acquittal on the grounds of insanity, and concluded that the State of Bihar had violated Article 21. It is to be noted that another noteworthy case is *Bhim Singh v State of J&K*³², in which Bhim Singh, an MLA, was arrested by the police in order to prevent him from attending the Legislative Assembly. The Hon'ble Court not only heard his wife's writ suit, but also granted the state compensation of Rs 50,000.

The case of *Meja Singh v SHO Police Station Zira*³³ is another terrible case in which the High Court of Punjab and Haryana took up the cause of the victim and awarded Rs 25,000 in compensation for the petitioner's son's wrongful incarceration. This time, the victim's cause was taken up by the High Court of Bombay in the case of *Ravikant Patil v DG Police, State of Maharashtra*³⁴, where the petitioner was taken to court handcuffed in clear violation of the Hon'ble Supreme Court's decision in the case of *Prem Shanker Shukla v Delhi Administration*³⁵. The most notable case under this area is *Mrs. Cardino v Union of India*³⁶ in which the accuse was arrested on the allegation of misappropriation of some plastic ware and hospital utensils worth Rs1500 but tormented like a hard-core criminal and thus died as a result of the abuse. It is pertinent to mention that when the petition was filed before the Hon'ble High Court of Bombay, the state was ordered to pay Rs 2,00,000 in compensation. The landmark case of *Saheli v Commissioner of Police*³⁷, in which the son of Kamlesh Kumari died as a result of improper treatment by a S.I. of Delhi Police, the Hon'ble Supreme Court ordered the Delhi Adm. to pay Rs 75,000 in compensation.

The next significant case is *Gudalure Cherian v Union of India*³⁸, in which the Hon'ble Supreme Court took an innovative approach by ordering that the entire matter be reinvestigated by the CBI, and upon completion of the investigation, the state of Uttar Pradesh be ordered to suspend the police officers and medical officers who attempted to save the accuse, as well as pay compensation of Rs 2,50,000 to the rape victim and Rs 1,00,000 to the victim of other crime.

³¹ (1983) 4 SCC 14

³² AIR 1986 SC 494

³³ 1991 ACJ 439

³⁴ 1990 ACJ 1060

³⁵ 1980 AIR 1535

³⁶ 1990 ACJ 804

³⁷ 1990 AIR 513

³⁸ 1992 (1) Crimes 2 SC

The case of *Bodhi Satta Gautam v Subhra Chakraborty*³⁹ is the next in line, in which the Hon'ble Supreme Court invented the concept of interim compensation and enforced the part third right against an individual by saying: This decision recognises the victim's right to compensation by providing that it shall be awarded by the Court on conviction of the offender subject to the Central Government's finalization of the Scheme. If a Court trying a rape case has authority to pay compensation at the end of the case, there's no reason to deny the Court the Right to award Interim compensation, which should be included in the Scheme as well. It is also to be noted that the jurisdiction to pay interim compensation shall be treated as part of the overall jurisdiction of the Courts trying the offences of rape, which is an offence against basic human rights as well as the Fundamental Right to Personal Liberty and Life, as stated in the aforementioned decision in Delhi Domestic Working Women's Forum. According to the Court, 'having regard to the facts and circumstances of the present case in which there is a serious allegation that Bodhisattva Gautam married Subhra Chakraborty before the God he worshipped by putting Vermilion on her forehead and accepting her as his wife, and also having impregnated her twice resulting in abortion on both occasions,' We, on being prima facie satisfied, dispose of this matter by providing that Bodhisattva Gautam shall pay in Subhra Chakraborty a sum of Rs. 1,000/-every month as interim compensation during the pendency of Criminal Case. He will also be responsible to pay compensation arrears at the same rate from the period the case was filed until now. As a result, when it comes to the award of compensation under the Cr.P.C., the Hon'ble Courts have taken a gentler stance (in terms of monetary element) than when it comes under the Constitution.

Thus, the judiciary has extended the frontiers of compensation as developed in Rudul Shah's case and started compelling the State to pay compensation to the victims. It is to be noted that the judiciary played an active role in the victim compensation in spite of the legislative silence. The role of judiciary in victim compensation through the Public Interest Litigation. It is now settled by the Courts in India that for violation of human rights and fundamental rights the State should pay the compensation⁴⁰.

VII. CONCLUSIONS AND SUGGESTIONS

Our criminal justice system provides more rights to the accused and less right to victims. But, justice phenomena demands that balance between the claims of two parties, who are in front of the court. Rights available to the victim of crime is just for the sake of showcase, these rights

³⁹ 1996 AIR 922

⁴⁰ Ranga Rao M.V., 'Judicial Trends Towards Victim Compensation' Andhra Law Times (Criminal) Journal, 1997, Vol. VX at p. 4

are not properly given to the victim. Compensation to the victim of crime plays a major role in the form of rehabilitation and to cope up with the offence against them. The liability to pay compensation to the victim was only on part of the accused before the 2009 Criminal Law Amendment Act. After this amendment, the liability to pay compensation is on the State government by the way of the fund created especially for victim compensation. With the introduction of 357A compensation granted to the victim by the order of court through District Legal Service authority is now mandatory which leaves no discretion to the court. As in Sec 357, the order of compensation by the court is discretionary leaving a loophole in the criminal justice system in awarding compensation to the victim. The amounts of a maximum limit of compensation granted to the victims in various States are very low. The Legal Services Authority has to keep a check that no victims and their dependents are deprived of the compensation which is provided under the Code of Criminal Procedure. As there are reasons due to which many people in a remote area does not have access to justice due to economic reasons, lack of information and judicial encumbrance. The Judiciary has also paved a way for the grant of compensation to the victims by way of various judicial pronouncements but to effectuate any progressive victim compensation reforms; there is a need for a sensitized judiciary that recognizes the importance of victim compensation. The need of the hour is to appoint those persons who are well acquainted with the legal provision of the justice delivery system so that they can guide the ignorant victims about their rights. The machinery of criminal justice in India must be reinvented to become a system that is curious to the nature of crimes, their effects on the victims and the stigma it bears in society, and alive to the developments of human rights jurisprudence internationally. As responsible citizens, we must constantly remind the consciousness of justice that it owes a sacrosanct obligation towards the rehabilitation of a victim.

It is suggested to design Victim Compensation Programmes to provide financial assistance to the victims, and their family members and also other eligible persons. It is also suggested to provide an interim compensation may be given to the victims basing on their socio-economic conditions.
