



Justice To Victims Of Crime In India: An Appraisal

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ABSTRACT

Victims of crime are integral to and important players in the criminal justice system both as a complainant and as a witness for the prosecution. A victim of crime is a person who sets the criminal justice process in motion. Although the justice system largely counts on the victim, the law of crimes is primarily concerned with the offender and his rights ignoring those of the victim. As the government assumes responsibility of enforcing justice, the victim is left with ineffective remedies. This paper explores that there is no systematic and uniform law defining the status and the rights of victims in the legal system, nor clear guidelines for the criminal justice agencies to deal with and address their grievances. The role of a victim in the current criminal justice process is limited to that of a witness for the prosecution even though he is one who has suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of his fundamental rights as a result of the crime. Consequently, victims are deemed to be an object and employed by criminal justice agencies to advance the prosecution case. The modern State has pushed the victim, who was once entitled to lay charges against the perpetrator, out of the justice process and made him powerless. Such an absence of an important and defined role for victim in prosecuting the offender is often the root of growing discontent among the victims of crime with common-law system of justice and a major source of secondary victimization as well. Victims of crime are persons having rights and privileges. Victims' rights are human rights. Human rights are basic rights which are inherent in a person by virtue of his birth and without which he would not be able to develop to his full potential. A crime is deemed to be an offence against the society and therefore, constitutes a violation of victims' rights as well as an act against the state. The author argues that being an individual with rights and dignity, a victim of crime requires recognition as a person before the law.

Keywords: Victims' rights, victim justice, human rights instruments, law of crimes, India, criminal justice system.

1. Introduction

Historically, references to justice to victims of crime in India, in the form of compensation being paid, are found in *Manusmriti*. Such a reference to victim compensation is also found in the *Code of Hammurabi*. In ancient societies, extracting compensation from the offender for the loss or injury suffered by the victim resulting from a crime was a common practice. However, the law started changing with the emergence of modern justice delivery system wherein the omnipotent State takes responsibility for delivering justice by apprehending and prosecution and convicting the perpetrator. In the entire process, the victim of crime was left with ineffective remedies. As a modern State came out and assumed the responsibility to enforce justice, the accused gradually became the central figure in the criminal justice process and, on the contrary, the victim was completely thrust out of the system and limited to a witness to a crime.¹

¹ V.N. Rajan, *Victimology in India-Perspectives Beyond Frontiers* 9 (Ashish Publishing House, New Delhi, 1995).

The Indian criminal justice system which is based on the common-law system of justice is, by and large, concerned with offenders, their prosecution, conviction, treatment, reformation or rehabilitation. It aims to determine the guilt or innocence of an accused. The role of the victim in the existing system is confined to that of a witness to a crime even if he is one who has sustained harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of his fundamental rights as a result of a crime.² Victim's interest in getting the accused punished is subordinated to the social control by the omnipotent State. Neither at the time of framing charges nor at the stage of passing of an order of discharge or acquittal, the views of the victim are taken note of by the Court. A victim of crime is not even consulted during the stage of trial. In addition, even after a criminal case results in the conviction of the offender, it is none other than the State which is enabled by law to defend the decision of the trial court in an appeal if it is filed against the conviction and sentence by the offender. Accordingly, the system left the victim of crime powerless and without a remedy, which is a major source of victim's dissatisfaction with the adversarial criminal justice system of common law inherited from the British colonial rule in India.

Broadly speaking, there are two systems of dispensation of criminal justice, namely, Adversarial System and Inquisitorial System. India follows the adversarial system of criminal justice wherein the accused is presumed to be innocent until the contrary is proved and the entire burden of proving the offence beyond reasonable doubt lies on the prosecution. Further, an accused is entitled to the right to silence and can not be forced to be a witness against himself and to reply to the questions.³ In the Adversarial System, the truth is supposed to spring from the respective variations of the facts presented by both the prosecution and the defence before the Court. The Court after giving reasonable opportunity of being heard to both the parties, decides upon whether the prosecution has proved the guilt of an offender beyond a reasonable doubt. Although the adversarial system, per se, appears to be just, fair and reasonable, it is heavily loaded in favour of the offender and not conducive to the rights of the victims or their woes.

Under the existing legal system, as soon as the investigation gets started, the role of the victim of crime is limited to that of a witness for the prosecution.⁴ On multiple occasions, the investigating officer carries out the investigation indifferently and very slowly, missing out the opportunity of collecting many relevant pieces of evidence and paving the way for entering into an illicit understanding with the offender. Even in the course of trial, the role of the victim is restricted to that of acting as a witness for the prosecution because the entire prosecution is dealt with by the State. The condition will get much worse when the trial is unreasonably delayed either due to the indifference and heavy workload of the public prosecutors.

At the international level, realizing the gravity of the plight of the victim of crime in the criminal justice process, the General Assembly of the United Nations adopted the **Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power [the 1985 UN Declaration]**⁵, which is often called the *Magna Carta* on victims' rights, at its 96th plenary meeting on the 29th day of November, 1985. The adoption of the 1985 UN Declaration, for the first time, recognized the need to set out basic principles and minimum standards in both the international and national legal framework for the rights of crime victims. The 1985 UN Declaration recognized four major components of victims' rights. They are:

- i. **Access to Justice and Fair Treatment:** this right includes, but is not limited to, right to be treated with compassion and respect for their dignity, right to access to the mechanisms of justice, right to be informed of their rights, right to information in respect of criminal proceedings and their role in it, right to be heard during proceedings involving release, parole, plea or sentencing, right to proper assistance throughout the legal process, right to privacy and security, right to speedy justice and right to prompt redress;⁶
- ii. **Restitution:** this right includes right to full and timely restitution from the accused which further covers return of property, payment for harm or loss suffered by the victim, reimbursement of expenses, restoration of rights; in case the offender is a public servant acting in his official capacity or quasi-official capacity, such right to restitution means restitution from the State;⁷
- iii. **Compensation:** this right includes right to compensation from the State where the victim of crime has although sustained significant bodily injury or impairment of physical or mental health, the compensation is not fully available or recovered from the offender;⁸
- iv. **Assistance:** this right means that the victims of crime is entitled to adequate material, medical, psychological and social assistance through governmental, voluntary, community-based methods, and

² K. Chockalingam (ed.), *Readings in Victimology* 55 (Raviraj Publications, Chennai, 1985).

³ The Constitution of India, art.20.

⁴ G.S. Bajpai, *Victim in the Criminal Justice Process: Perspectives on Police and Judiciary* 25 (Uppal Publishing House, New Delhi, 1997).

⁵ UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, GA Res 40/34, GAOR, UN Doc A/Res/40/34 (February 2, 2023).

⁶ *Id.*, arts. 4,5,6,7.

⁷ *Id.*, arts. 8,9,10,11.

⁸ *Id.*, arts. 12,13.

includes right to information about available health and social services and right to be aided and dealt with by sensitized and trained police, justice, health and social service personnel.⁹

The concept of Victimology is a new trend and finds its place in recent importance in the 1940's and 1950's.¹⁰ Not just at the international level but at the regional and the national level as well, various legal instruments have been formulated to improve the condition of victims in criminal justice process. Many organisations like the United Nations, the European Union, the Council of Europe and the African Union have adopted various instruments incorporating the rights of victims. Similarly, the Rome Statute of the International Criminal Court contains rights for victims. In Europe, the Convention on the Compensation of Victims of Violent Crimes incorporates the essential rights of victims as enshrined in the 1985 UN Declaration. The Council of Europe has recommended thorough revamping of criminal justice system including victim's rights in every stage of criminal proceedings. Pursuant to the same, many European States enacted laws which aim to provide for increased participation and more substantive rights to victims of crime. **The Criminal Injuries Compensation Act, 1995** of the United Kingdom, the **Victims of Crime Assistance Act, 1996** of Victoria, the **Victims and Witnesses Protection Act, 1982** as well as the **Victims Rights and Restitution Act, 1999** of the United States of America are illustrative of the legislative trend across the globe. Despite these international and national efforts, compared to the rights of the accused, victims' are very thinly projected. In Human Rights instruments, including the **Universal Declaration of human Rights, 1948** and the **International Covenant on Civil and Political Rights, 1966**, victim's rights are not explicitly incorporated. Besides, most of the countries enacted criminal laws in order to address the human rights aspects of the accused of a crime. All such kinds of the rights of the accused have thoroughly and exhaustively been recognised under the international¹¹ and the regional¹² human rights instrument and under the constitution of the various nations. On the contrary, the rights of victims are primarily recognized and protected under statutory provisions rather than Constitutional texts.¹³ It is time to recognise the rights of the victim in par with those of the accused. In fact there is enormous evidence to establish the fact that the victim of the crime should be given due respect and their rights should not be jeopardized.¹⁴

Nevertheless, the rights of victims under constitutional texts have thinly and implicitly been projected and apparently lack the constitutional coverage. The framers of the Constitution of India also failed to explicitly protect and ensure the rights of the victims of crime. Unless State adopts a policy to take the responsibility, the plight of the victim of crime will not be alleviated in the criminal justice process. Towards this end, it is the constitutional recognition of the victims' rights which would ensure better status of victims. The inclusion of specific provisions as to the compensatory jurisprudence in the constitutional texts of some countries is the best illustrations of the revolutionary development of law on the compensatory jurisprudence. For example, the Nepal Constitution explicitly guarantees that a victim of crime shall have the right to justice including social rehabilitation and compensation in accordance with the provisions of law.¹⁵ Likewise, the Philippines Constitution lays down that the law shall provide for penal as well as civil sanctions for the violations of this section and for compensation to victims of torture or similar practices and their families for their rehabilitation.¹⁶

2. Methodology

This is an analytical study. This paper is prepared primarily on the basis of secondary data. However, observation has been used as a method for the analysis of the problem in this paper. The sources of secondary data are books, journals, and internet information.

⁹ *Id.*, arts. 14, 15, 16, 17.

¹⁰ Katherine S. Williams, *Criminology* 13 (Oxford University Press, Oxford, 6th edn. 2008).

¹¹ The Universal Declaration of Human Rights, 1948, art. 11; The International Covenant on Civil and Political Rights, 1966, art. 14; The Convention on the Rights of the Child, 1989, art. 40 (2) (b).

¹² The Additional Protocol of the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, art. 10; The American Declaration of the Rights and Duties of Man, 1948, art. 18; The European Social Charter of 1961, art. 11; The African Charter on Human and Peoples' Rights of 1981, art. 7; The American Convention on Human Rights, 1969, art. 8.

¹³ The Constitution of the Republic of South Africa, 1996, art. 35; The Constitution of the Republic of Fiji, 2013, arts. 13 and 14; The Constitution of the Democratic, Socialist and Republic of Sri Lanka, 1978, art. 13(3); The Constitution of the German Democratic Republic, 1949, art. 136; The Constitution of Kenya, 2010, arts. 49, 50; 5th Amendment of the Constitution of United States, 1776.

¹⁴ Jeeva Niriella, "Restitution or Compensation to the Victim of Crime" 15 *The Sri Lanka J. International* 139 (2015).

¹⁵ The Constitution of Nepal, 2005, art. 21(2).

¹⁶ The Philippines Constitution, 1987, art. 3(12)(4).

3. Measures for Ensuring Justice to Victims of Crime in India

The Committee on Reforms of Criminal Justice System (2003), the Second Administrative Reforms Commission's 5th Report on Public Order (2007), the Law Commission of India's 226th Report on Compensation to the Victims (2010) and Justice Verma Committee Report (2013) recommended several measures for the empowerment and rehabilitation of victims. Keeping in view the mandates of various international instruments and the recommendations of the said commissions and Committees, the following measures have, over the years, been taken by the State for ensuring justice to the victims of crime in India:

- i. Legislative and Administrative Measures; and
- ii. Judicial and Quasi-Judicial Measures;

3.1 Legislative and Administrative Measures

The Indian criminal justice system is governed by four major laws. (i) **The Constitution of India, 1950**; (ii) **The Indian Penal Code, 1860**; (iii) **The Code of Criminal Procedure, 1973** and (iv) **The Indian Evidence Act, 1872**. Apart from legislations, there are a few special legislations which deal with victim's right and empowerment. They are:

- (i) The Fatal Accident Act, 1855; (ii) The Motor Vehicles Act, 1988; (iii) The Probation of Offenders Act, 1958; (iv) The Protection of Children from Sexual Offences Act, 2012; (v) The Protection of Women from Domestic Violence Act, 2005; (vi) The Maintenance and Welfare of Parents and Senior Citizens Act, 2007; (vii) The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989; (viii) The Juvenile Justice (Care and Protection) Act, 2000.

3.1.1 The Constitution of India

The **Constitution of India** is the supreme law of the land and considered to be the mother of all laws. The Constitution of India guarantees equal protection to all and forbids the State from depriving a person's life and personal liberty without procedure established by law.¹⁷ Social justice which is the corner stone of the Indian Constitution has its reflections in the criminal justice system also. The 'Rule of Law' has been held to be the basic feature of the Indian Constitution by the Supreme Court¹⁸ and has also been embodied in criminal justice system.

The Constitution has few provisions which provide for victim protection, their rights and recognise the principle of victim compensation. **Article 14** and **Article 21**, which contain important fundamental rights shall be read with Directive Principles of State Policies contained in **Articles 39A, 41, 46, and 51C**. The first part of **Article 14**¹⁹ is negative, prohibiting the state not to deny equality before law to any person. The second part of the Article has a positive content indicating an obligation on the state to extend equal protection of laws to every person.

Article 21²⁰ ensures life with dignity, right to legal aid, fair trial, as a part of inalienable right to life and personal liberty. This Article guarantees protection against unjustified deprivation of life and liberty and imposes the obligation on the state to compensate victims of violent crimes. The principle of the state accepting liability for criminal injuries suffered by its citizens is an acknowledgement of state's obligation for protection of human rights. It is also in public interest as it tends to strengthen the criminal justice system and promote general welfare according to the directive principles of the state policy.²¹ **Article 39A** directs the state to provide free legal aid and ensure to promotion of justice on the basis of equal opportunity.²² **Article 41** provides right to work, to education and public assistance in certain cases of underserved want.²³ **Article 51-A** makes it a fundamental duty of every citizen of India "to protect and improve the natural environment and to have compassion for living creatures" and "to develop humanism. **Article 51(c)** directs the state to endeavour to foster respect for international law and treaty obligations in the dealings of organized peoples with one another. The Fundamental Rights and Directive Principles together have laid a firm foundation for a new social order in which justice, social and economic, would thrive in the national life of the country. **Article 41**, which has

¹⁷ The Constitution of India, arts. 14, 21.

¹⁸ *Id.*, art. 14.

¹⁹ *Id.*, art. 14: Equality before law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

²⁰ *Id.*, art. 21: Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law

²¹ *Id.*, art. 38: State to secure a social order for the promotion of welfare of the people.

²² *Id.*, art. 39A: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

²³ *Id.*, art. 41: The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

pertinence to victimology in a wider perspective, mandates *inter alia*, that the state might make an effective provision for "securing public assistance in cases of disablement and in other cases of undeserved want."²⁴ Surely, the victims and other victimized people swim into the haven of **Article 41**.²⁵ If we empathetically interpreted and creatively imagined, here we find the constitutional beginnings of victimology.²⁶ Further, the guarantee against unjustified deprivation of life and liberty under **Article 21** has in its elements obligating the state to compensate victims of criminal violence²⁷.

The human values of **Part III** and **Part IV** of the Constitution also have vital bearing on the criminal justice. The expressions "We the people of India," "justice-social, economic and political," "equal protection of laws"; dignity of the individual, basic freedoms, fair procedure and free legal aid and other provisions enshrined in the Constitution have humanized the system of social protection through criminal law. These rights and values though are implicit in our Constitution, have little consideration by the agencies of the criminal justice system, i.e. by the Police, Prosecutors and Courts.

3.1.2 Victims' Compensation under the Code of Criminal Procedure, 1973

The essential objective of criminal law is to protect society against criminals and law-breakers. For this purpose the law holds out threats of punishments to prospective law-breakers as well as attempts to make the actual offenders suffer the prescribed punishments for their crimes. Therefore, criminal law in its wider sense consists of both the substantive criminal law and the procedural criminal law. Substantive criminal law defines offences and prescribes punishments for the same, while the procedural criminal law is to administer the substantive law. In the absence of procedural criminal law, the substantive criminal law would be almost worthless.²⁸ Because, without the enforcement mechanism, the threat of punishment held out to the lawbreakers by the substantive criminal law would remain empty in practice. Empty threats do not deter, and without deterrent effect, the law of crimes will have hardly any meaning or justification.

The Code of Criminal Procedure [Cr.PC], 1973²⁹ is major legislation on procedure for administration of substantive criminal law in India.³⁰ It was enacted in 1973 and came into force on 1 April 1974. It provides the machinery for the investigation of crime, apprehension of suspected criminals, collection of evidence, determination of guilt or innocence of the accused and the imposition of suitable punishment on the guilty person. Additionally, it also deals with public nuisance, prevention of offences and maintenance of wife, child and parents. It takes care of all kinds of victims to protect their rights. It is essential to find out and analyse the various provisions of Cr.PC dealing with the victims. The three main segments of criminal procedure are pre-trial procedure, intermediate procedure and trial procedure. Various machineries get involved in each of these procedures to provide justice to victims. The Cr.PC clearly demarcates the powers and functions of various agencies including the police, prosecution, court and prison authorities to be exercised during the criminal procedure. But the most important person for whom the entire machinery performs, i.e., victim is completely forgotten. He doesn't get any voice in the proceeding either in the form of participation, oppose the bail or prefer appeal against the verdict. At present, the victims are the worst sufferers in a crime and they don't have much role in the court proceedings.³¹

In keeping with the recommendations of the Law Commission of India³² a comprehensive provision for victim compensation has been inserted in the **Section 357** of Cr.PC. According to **Section 357** clauses (1) and (3), the court may award compensation to the victims of crime in the interest of justice at the time of passing judgment, if it considers appropriate in a particular case. **Section 357** also empowers the trial court and the appellate courts to award compensation to crime victims only after the trial of the accused. Under **Section 357(1)**, compensation may be awarded only when the court imposes a fine and the amount of compensation

²⁴ Srinivasan Murugesan and Mathew Jane "Victims and the Criminal Justice System in India: Need for a Paradigm shift in the Justice System" *TEMIDA* 51 (2007).

²⁵ *Id.* at 55.

²⁶ *Id.* at 59.

²⁷ D.D. Basu, *Constitutional Law of India* 123 (Wadhwa & Co., Nagpur, 2003).

²⁸ B.B. Das, *Victims in Criminal Justice System* 34 (APH Publishing Corporation, New Delhi, 1997).

²⁹ Act 2 of 1974.

³⁰ Dalbir Bharti, *The Constitution and Criminal Justice Administration* 320 (APH Publishing, New Delhi, 2005).

³¹ *Supra* note 20, the Statement of Objects and Reasons.

³² Law Commission of India, "41st Report on Indian Penal Code, 1860" (1969).

is limited to the amount of the fine. It lays down four grounds for imposing a fine.³³ However, **Section 357(3)**³⁴ empowers the Court to award compensation to the crime victims even in cases where fine does not form a part of the sentence. The amount of compensation depends upon the discretion of the court, depending on the facts and circumstances of each case. This sub-Section was introduced after the repeal of the Cr.PC of 1898. Since, this provision is not conditioned on a sentence of fine; some argue that it assumes the role of an additional punishment.

Apart from this section, the victim can also approach the higher courts under **Section 482** of Cr.PC to claim compensation. The higher courts can exercise their inherent powers in awarding the compensation. But Supreme Court did not favour invoking such power in the view of existing statutory provision under **Section 357**. In *Palaniappa Gounder v. State of Tamil Nadu*,³⁵ the court observed that if there is an express provision in a statute governing a particular subject matter, there is no scope for invoking or exercising the inherent powers of the court because the court ought to apply the provisions of the statute.

However, in *Bodhisattwa Gautam v. Subhra Chakraworthy*³⁶ the Supreme Court exercising the inherent power awarded interim compensation to the respondent, a rape victim. While awarding the compensation, the court relied on its own earlier judgment in *Delhi Domestic Working Women's Forum v. Union of India*, in which the Division Bench comprising *Kuldeep Singh* and *S. Sagir Ahmed JJ.*, observed that if the court trying an offence of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the Court the right to award interim compensation.

It is important to note that the trial courts have shown reluctance in using their powers in awarding compensation under **Section 357** liberally. Though the provision for awarding compensation has been in existence for a considerable period of time in statute, it appears that the criminal courts have not taken significant note of these provisions or exercised the power vested in them there under. The Law Commission³⁷ referring to this regrettable omission observed that we have a fairly comprehensive provision for payment of compensation to the injured party under **Section 545 of Code of Criminal Procedure, 1898**. It is regrettable that our courts do not exercise their statutory powers under this section as freely as liberally as could be desired. The section has, no doubt, its limitations. Its application depends, in the first instance, on whether the court considers a substantial fine as proper punishment for the offence. In the most serious cases, the court may think that a heavy fine in addition to imprisonment for a long term is not justifiable, especially when the public prosecutor ignores the plight of victim of the offence and does not press for compensation on his behalf.

More than three decades back *Iyer Krishna J.* speaking for the Court in *Maru Ram v. Union of India*³⁸ in his inimitable style said that while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty. He said that victimology must find a solution, not through barbarity but by compulsory recoupment by the wrong doer of the damage not by giving more pain to the offender but by lessening the loss of the dejected. The number of cases where **Section 357** has been used for awarding compensation is like salt in the flour. Courts never took it seriously.

So taking note of the indifferent attitude of subordinate courts in awarding the compensation to the crime victims, the Supreme Court in *Hari Krishan v. Sukhbir Singh*³⁹ called the attention of all the courts and directed to apply the provisions under **Section 357** liberally and award adequate compensation to crime victims, particularly when the accused is released on probation or during the compromise entered into by the parties. Further, the courts in India have considered compensation as a mitigating factor and in few cases reduced the punishment accordingly.

The Code of Criminal Procedure (Amendment) Act, 2008 brought sweeping changes in criminal law to help the cause of victims. It is a welcome move by the legislature in protection of rights of victims. An attempt has been made here to discuss the provisions which touch the issues of crime victims. The Act amends the definition of victim by inserting a new **clause (wa)** under **Section 2** after (w) to include the victim's guardian

³³ *Supra* note 20, s. 357(1) empowers the court to award compensation out of the fine in the following cases (i) for meeting proper expenses of prosecution; (ii) compensation to a person or dependants for the loss or injury caused by the offence when he can recover compensation in a civil court; (iii) compensation to persons entitled in damages under the Fatal Accidents Act, 1855; and (iv) compensation to a bona fide purchaser of being the subject of theft, criminal misappropriation, cheating, etc. is ordered to be restored to the person entitled to it.

³⁴ *Supra* note 20, s. 357(3): "When a Court imposes a sentence, of which fine does not form a part, the Court may when passing judgment, order the accused to pay, by way of compensation, such amount as may be specified in the order to the person, who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced".

³⁵ AIR 1977 SC 1323.

³⁶ AIR 1996 SC 922.

³⁷ Law Commission of India, "42nd Report on the Code of Criminal Procedure, 1898" para 3.17(1971).

³⁸ (1981) 1 SCC 107.

³⁹ AIR 1988 SC 2127.

and legal heir.⁴⁰ This amendment helps the relatives particularly those who are dependents on the victims to get the compensation for the loss of victim either in person or in earnings. Further, they can make a claim opportunity to be heard or participate in the criminal justice process.

A new sub-Section (8) has been added to **Section 24** which permits the victim to appoint a lawyer of his own choice to assist the prosecution.⁴¹ This allows the victim whenever he feels that the prosecution is not effectively presenting his case, he can press his claims through his lawyer. However, the Act is silent about providing the financial assistance to the victim in this regard. Many times the victims of the offences of rape feel that the persons particularly the men who hear their cases are not sensitive and often gender biased. To answer this anomaly the Act added a *proviso* to **Section 26** and provides that the offences of rapes shall be tried by courts presided by the women.⁴² Here the researcher intends to highlight the Government of Karnataka has established ten special courts across the state to try the offences of rape and other sexual abuses.

Further, the Act requires during investigation relating the rape cases, the statement of victim of rape shall be recorded at the place of her choice and by a woman police officer in presence her parents, or relatives and social worker of that locality.⁴³ This will give the rape victim confidence and courage to give the details of the offence more freely. Another change the Act has made is prescribing the time frame for completion of investigation of child rape cases. A new sub section has been added to the existing provision **Section 173** which mandates the investigation has to be completed within three months from the date of complaint or information.⁴⁴ Further, where an investigation relates to an offence under **Sections 376, 376A, 376B, 376C, and 376D IPC**, the report forwarded to a magistrate shall contain the report of the medical examination of the woman.⁴⁵

The amendment to **Section 309** of Cr.PC has the additional proviso that when the inquiry or trial relates to an offence under **Sections 376 to 376D of IPC**, the inquiry or trial shall, as far as possible, be completed within a period of two months from the date of commencement of the examination of witnesses.⁴⁶ In order to protect the identity of the victim rapes so as to protect them further humiliation, the Act requires all the trials of rapes cases shall be conducted *in camera* by a woman judicial officer.⁴⁷ Further, the Act permits the printing and publication of trial proceedings subject to the condition of maintaining the confidentiality of names and addresses of the victims.⁴⁸

The most important change the Act brought was in relation to victim compensation. The much awaited compensation scheme was statutorily provided for by the present amendment. A new **Section 357A** has been inserted which requires all the states to frame a victim compensation scheme in consultation with central government.⁴⁹ On recommendation by the court for compensation, the district legal service authority or state

⁴⁰ *Supra* note 20, s. 2 (*wa*): "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 "victim" includes his or her guardian or legal heir".

⁴¹ In Section 24 of the principal Act, in sub-Section (8), the following proviso shall be inserted, namely: - "Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this subsection."

⁴² In Section 26 of the principal Act, in clause (a), the following proviso shall be inserted, namely: - "Provided that any offence under section 376 and sections 376A to 376D of the Indian Penal Code shall be tried as far as practicable by a Court presided over by a woman."

⁴³ In Section 157 of the principal Act, in sub-section (1), after the proviso, the following proviso is inserted, namely:—"Provided further that in relation to an offence of rape, the recording of statement of the victim is to be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality."

⁴⁴ In Section 173 of the principal Act,—(a) after sub-section (1), the following sub-Section is inserted, namely:— "(1A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.";

⁴⁵ *Id.*,s. (2) (h).

⁴⁶ In Section 309 of the principal Act,- (a) in sub-section (1), the following proviso shall be inserted, namely: - "Provided that when the inquiry or trial relates to an offence under Sections 376 to 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible, be completed within a period of two months from the date of commencement of the examination of witnesses."

⁴⁷ In Section 327 of the principal Act,— (a) in sub-section (2), after the proviso, the following proviso is inserted, namely:—"Provided further that *in camera* trial shall be conducted as far as practicable by a woman Judge or Magistrate."

⁴⁸ (b) in sub-Section (3), the following proviso is inserted, namely:—"Provided that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties."

⁴⁹ After Section 357 of the principal Act, the following section is inserted, namely:—357A.(1) Every State Government in co-ordination with the Central Government is to be prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

legal service authority must decide on the quantum of compensation.⁵⁰ There is also a provision for relief after inquiry by the state or district legal service authority in those cases where no trial takes place because the offender cannot be traced or identified.⁵¹

The amendment in 2008 has been further supplemented by the **Criminal Law Amendment Act 2013** by adding **Section 357B**, **Section 357C** have been inserted in Cr.PC⁵² **Section 357B** provides the additional compensation to victims who come under **Sections 326A, 376D** of the **IPC**. **Section 357C** gives the directions to all the hospitals whether they run by govt. or by local authorities that they provide the free medical aid to the victims of **Sections 326 A, 376 A, 376 B, 376 C, 376 D of IPC**.

Although the procedural formalities (quantum and disbursement procedure of compensation) have yet to be worked out, this is indeed a progressive development. It has identified the need for monetary support towards the immediate and long term rehabilitation of the already shattered victim of rape. The Act also provides an important right to victim to appeal against the acquittal or inadequate sentence of accused by the court. The victim can apply against inadequate compensation. A *proviso* has been added to **Section 372** in this regard. Further, the victim can appeal in the same court where the accused can appeal the order of conviction.⁵³

3.1.3 Compensation to the Victims of Crime under Special Legislations

3.1.3.1 The Probation of Offenders Act, 1958

The Probation of Offenders Act, 1958⁵⁴ aims to release the convict on probation. The Act empowers the trial court to release the offender on admonition and on probation for good conduct under **Sections 3 and 4**. While doing so **Section 5** empowers the trial court to order for compensation. The plain reading of this section clearly shows that the power in case of this Act vests only with the trial court and not else.⁵⁵ The provision lays down that a court while directing the release of an offender after admonition or on probation for good conduct, may order such person to pay compensation for the loss or injury which he caused by his act or omission as the Court thinks to be reasonable. The court is also enabled to make an order to defray the cost of proceedings. However, the Clause (2) provides that the victim may recover any compensation ordered under clause (1) as fine. But in practice the courts in India are not paying adequate attention to this provision.

The Act gives a limited discretionary power to the court to order compensation that in such cases the offender must be released on probation. However, the Act on one hand shows its concern of offenders of special category like the first time offenders or below 21 years of age or women offenders of any age and on other hand by

⁵⁰ 2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, is to decide the quantum of compensation to be awarded under the scheme referred to in sub-Section (1).

3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

⁵¹ 4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

5) On receipt of such recommendations or on the application under sub-Section (4), the State or the District Legal Services Authority is to be, after due enquiry award adequate compensation by completing the enquiry within two months.

6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”

⁵² Act 5 of 2009.

⁵³ *Id.*, s. 372: the following proviso is inserted, namely:—“Provided that the victim is to have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal is to lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”

⁵⁴ Act 20 of 1958.

⁵⁵ *Id.*, s. 5: Power of court to require released offenders to pay compensation and costs

1) The Court directing the release of an offender under Section 3 or Section 4 may, if it thinks fit, make at the same time a further order directing him to pay-

a) Such compensation as the Court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

b) Such costs of the proceedings as the Court thinks it reasonable.

2) The amount ordered to be paid under sub-Section (1) may be recovered as a fine in accordance with the provisions of Sections 386 and 387 of the Code

3) A Civil Court trying any suit, arising out of the same matter for which the offender is prosecuted shall take into account any amount paid or recovered as compensation under sub-Section (1) in awarding damages.

awarding compensation it protects the interests of victim. Therefore the Act tries to balance between the offenders and the victim's interests.

3.1.3.2 The Motor vehicles Act, 1988

Keeping in view enormous increase in road accidents due to rash and negligent driving or otherwise, a specific provision has been made for providing compensation to the victims under the **Motor Vehicle Act, 1988**⁵⁶. **Sections 140 to 142** of Chapter X of the Act provide compensation to victims, even without fault in some cases to avoid hardship to the dependents for the loss caused due to the death of the deceased or to the victim becoming permanently disabled. The Act also provided the standard rates of compensation to avoid anomaly in the cases, which is a right step.

3.1.3.3 The Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989

Special social enactments have come into force from time to time for SCs and STs in order to uphold the constitutional mandate and safeguard the interests of these vulnerable sections of the society. The **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**⁵⁷ came into force from 30th January, 1990 in order to check and deter crimes against persons belonging to SCs/STs by persons belonging to other communities. This law has extended the positive discrimination in favour of SCs and STs to the field of criminal law in as much as they prescribe penalties that are more stringent than the corresponding offences under the **Indian Penal Code** (IPC) and other laws. Special Courts have been established in major states for speedy trial of cases registered exclusively under these Acts.

This Act describes various offences of atrocities and also provides different punishments.⁵⁸ **Section 4** of the Act deals with the punishments for the offences of atrocities. If an offence is committed by an upper caste member upon a lower caste member, such person shall be liable for punishment under this Section. For the purpose of speedy disposal of the cases under the Act, the state government in consultation with the Chief Justice of High Court can declare the Court of Session as special court.⁵⁹

3.1.3.4 The Protection of women from Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act [PWDVA], 2005⁶⁰ is a piece of legislation meant to provide more effective protection to the right of women guaranteed under the constitution who are victims of violence of any kind occurring within the family. The very nomenclature of the Act indicates that it is not restricted to violence perpetuated against women by her husband or in-laws. It includes under its protective umbrella every women living in a domestic relationship as a member of family with the person indulging in violence.⁶¹ The law intends to protect women against the violence occurring within the family or in a domestic relationship. The Act has been designed to create certain civil rights, some declaratory (e.g., right to protection against Domestic Violence) and some substantive (e.g., right to maintenance, right to compensation, right to shared household). According to the Act the domestic violence refers to any act harmful or injurious to the women which endangers or abuses her physically or mentally including physical abuse, sexual abuse, emotional abuse or economic abuse, or forces her to meet any unlawful requirement including dowry, or threatens her or any person related to her or otherwise injures or harms her.⁶²

The remedies under the Act consist of ex parte, interim, and permanent orders including, *protection orders*⁶³ prohibiting the abuser(s) from continuing the abuse, aiding or abetting the commission of domestic violence, entering employment premises or school grounds of the victim's children, and alienating the victim's access to assets held jointly or separately; *residence orders*⁶⁴ that can remove the abuser(s) from the shared household, restrain the abuser(s) from entering premises of the shared household in which the victim resides, restrain the abuser(s) from alienating the victim from or disposing of the shared household, and/or direct the abuser(s) to secure equal and alternate accommodations for the victim if staying in the residence is not a viable option, *monetary relief* including medical expenses and loss to property as well as maintenance for the victim and her

⁵⁶ Act 59 of 1988.

⁵⁷ Act 33 of 1989.

⁵⁸ *Id.*, ss. 3 (1)(i)to(xv), 3(2).

⁵⁹ *Id.*, s. 14.

⁶⁰ Act 43 of 2005.

⁶¹ Kuljit Kaur, "Domestic Violence Act 2005: A Step towards Upholding the Rights of Women" III *NYAYADEEP Journal of NALSAR*81 (2007).

⁶² *Supra* note 51, s. 3.

⁶³ *Id.*, s. 18.

⁶⁴ *Id.*, s. 19.

children⁶⁵ and *custody orders*⁶⁶ whereby the court can grant custody of children to the victim while an application for relief is pending, and can deny visitation rights to the abuser(s) if deemed harmful.⁶⁷ The PWDVA provides protection officers in each state district to assist women victims through the court process. They file domestic incident reports to the magistrates deciding the cases of their circumstances, helping prepare complaints, informing and assisting victims with their right to obtain free legal and medical aid, counselling, and option of staying in shelter homes for safety. They also ensure compliance of the orders passed in their favour and the relief granted⁶⁸. A violation of the protection order by the respondent is an offence which can result in imprisonment for one year or a fine up to Rs. 20,000 or both. If the protection officer refuses to discharge his duties, he shall be punished with imprisonment for one year or with a fine of 20,000 rupees or with both.⁶⁹ This Act is a nice piece of legislation to protect the victims of domestic violence as such violence is a phenomenon that cuts across boundaries of ethnicity and age.

3.1.3.5 The Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice (Care and Protection of Children) Act 2015⁷⁰ took a broader view and came out with measures of protection for juvenile in conflict with law and “child in need of care and protection” instead of the two types of children as provided in the earlier Act. This Act was further amended in 2006 to make it more vibrant to protect the rights of the children at large. Although juvenile in conflict with Law to a larger extent is similar with the delinquent juvenile, the provisions for the children in need of care and protection are very broad and cover wide ranging aspects of neglect which the children are facing and hence are drawn into this category.

The Act explains in broader terms the child in need of care and protection⁷¹ which includes any child victim who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,⁷² and who is victim of any armed conflict, civil commotion or natural calamity.⁷³ The Act envisages the constitution of ‘Juvenile Justice Boards’ or ‘Child Welfare Committees’ for every district or group of districts to exercise powers and discharge duties as conferred and imposed by the Act in relation to juveniles in conflict with law and the children in need of care and protection respectively.

3.1.3.6 Administrative Measures for Compensation to and Rehabilitation of Victims of Crime

The Government of India has, over the years, adopted various schemes to strengthen victim justice in India. However, the implementation of these schemes at the ground level has always been questioned because of procedural lapses. *Inter alia*, reference may be made to the following government schemes on relief and rehabilitation of the victims of crime:

3.1.3.6.1 Scheme for Relief and Rehabilitation of Victims of Rape

The Supreme Court of India in a landmark judgement in *Domestic Working Women’s Forum v. Union of India*⁷⁴ directed the National Commission for Women to develop a scheme to wipe out the plight of the rape victims. The Court further observed that keeping in view the Directive Principles contained in Article 38 (1) of the Constitution of India, it is absolutely important to establish a Criminal Injuries Compensation Board since a rape victim, apart from psychological harm, very often suffers substantial economic loss and in some instances is too traumatised to continue in employment. The Court also ruled that compensation for victims of crime shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board regardless of whether the offender is convicted.

This leading judgement gave rise to the relief and rehabilitation to the victims of rape under the following means:

- i. A victim of rape is entitled to get compensation which may extend to Rs. 2,00,000 provided she testifies against the accused in a Court of law;
- ii. There shall be constituted a Criminal Injuries Compensation Board at District/State/National Level;
- iii. Such a Board shall take note of the anguish and shock as well as loss of earnings because of pregnancy and the expenses of child birth if it occurs resulting from rape;
- iv. Constitution of District Level Committees headed by the District Magistrate to consider the claim by a rape victim.

⁶⁵ *Id.*, s. 20.

⁶⁶ *Id.*, s. 21.

⁶⁷ HRLN Delhi’s Women’s Justice Initiative, *The Protection of Women from Domestic Violence Act 2005 Handbook* (2007).

⁶⁸ *Supra* note 51, s. 5.

⁶⁹ *Id.*, s. 31.

⁷⁰ Act 56 of 2015.

⁷¹ *Id.*, s.2.

⁷² *Id.*, s. 2(b)(iv).

⁷³ *Id.*, s. 2(b)(ix).

⁷⁴ (1995) 1 SCC 14.

- v. Provision of budgetary requirements for the scheme, which would be transferred to the States as Grants-in-Aid.

3.1.3.6.2 Scheme of Compensation to Victim of Violence by Left-Wing Extremists

The Ministry of Home Affairs, Govt. of India, has introduced and notified a special scheme entitled “Security Related Expenditure [SRE] for Naxal-Affected States” to pay compensation in the form of ex-gratia payment to the victim at the hands of Left-wing Extremists as per the revised scale laid down vide MHA’s Letter No. 11-18015/4/03-IS.III dated 11th February, 2005 read with Letter No. II-18015/4/03-IS.III dated 3rd March, 2005. A maximum ceiling of Rs. 1 lakh in the form of ex-gratia payment shall be made to the family of a civilian and that of Rs. 3 lakhs shall be made to the family of a security personnel killed. It is worth-mentioning that this scheme covers almost a total of 176 districts, from across India, which are affected by Left-Wing Extremism.

3.1.3.6.3 Scheme for Assistance to Victims of Terrorism and Communal Violence

In our country, there is no comprehensive law for awarding compensation to the victims of terrorism. However, the Ministry of Home Affairs evolved and notified a scheme entitled “Assistance to Victims of Terrorists and Communal Violence” which came into force with effect from April 1, 2008. This Scheme provides for monetary assistance to the family in case of death or permanent incapacitation of the victim in terrorist violence. The assistance would include, *inter alias*, ex-gratia or other relief from the State Government. A sum which may extend to Rs. 3 lakhs would be given to the affected family regardless of the number of deaths in the family in a particular incident. There shall be a district level committee under the chairmanship of District Magistrate to identify the beneficiaries. However, this scheme is primarily based on welfare approach and not on rights-based perspective. Under the Scheme, a victim has no right to get compensation; however the monetary assistance would depend on the recommendations made by the government agencies.

3.1.3.6.4 Rehabilitation Packages to Provide Compensatory Relief to the Victims of 1984 Riots

On the recommendation of the Nanavati Commission Report on the 1984 anti-Sikh Riots which was placed before the Parliament in August, 2005, the Government of India decided to sanction ex-gratia amount and other assistance to the victims of the Riots. The salient features of the package are summarized below:

- i. An amount of Rs. 3.5 lakhs each would be given to the families of almost 3,500 people who died in the riots;
- ii. An amount of Rs. 2 lakh each would be given to 22,000 odd-Sikh families which had to be relocated in Punjab after the riots.

3.1.3.6.5 Ujjawala Scheme for Victims of Trafficking for Commercial and Sexual Exploitation

Ujjawala a comprehensive scheme which was launched by the Ministry of Women and Child Development in 2007 for prevention of trafficking, rescue and rehabilitation of women and child victims of trafficking for commercial sexual exploitation in India. Broadly speaking, this scheme contains five components, viz., prevention, rescuer, rehabilitation, re-integration and repatriation to the victims of trafficking. The main beneficiaries of the scheme are women and child victims who have been trafficked for commercial sexual exploitation as well as those women and children who are vulnerable to becoming victims of the crime. These vulnerable groups embrace slum dwellers, children of sex workers, refugees, homeless victims of natural disasters. Immediate relief to victims includes the provision of food, shelter, trauma care and counselling to the rescued victims.⁷⁵

3.2 Judicial and Quasi-Judicial Measures

Under the scheme of the Constitution, the Indian judiciary acts as a guardian of the Constitution as well as a custodian of the rights of the people of India. The Supreme Court under **Article 32** and High Courts under **Article 226** shall have power to pass appropriate orders which also include ensuring the rights of the victims. The Apex Court, in the absence of statutory provision, for the first time, in a leading judgement in *Rudal Shah v. State of Bihar*⁷⁶ invoking its writ jurisdiction under **Article 32** recognised victim’s right to compensation for the infraction of his human rights. It was a case wherein the petitioner Rudal Shah was arbitrarily detained in the Ranchi Jail for a prolonged period of 14 years even after the Trial Court ordered his acquittal. While directing the release of Rudal Shah, the Supreme Court awarded an amount of 35,000/- by means of compensation.

Custodial torture is one of the instances of abuse power and a clear contravention of human rights by the protector of the law himself. Such torture not just violates **Article 21** of the constitution of India which guarantees the fundamental right to life and personal liberty but contravenes **Article 3** of UDHR and **Article 6** of ICCPR that everyone has the right life, liberty and security and no one shall be arbitrarily deprived of life as well. In addition, **Article 5** of UDHR and **Article 7** of ICCPR explicitly provide that no person shall be subjected to torture, or cruel, inhuman or degrading treatment or punishment. Similarly, **Article 9** of UDHR

⁷⁵ Ministry of Women and Child Development, “Ujjawala Scheme” (2007), available at: <https://wcd.nic.in> (last visited on February 2, 2023).

⁷⁶ (1983) 4 SCC 141.

and **Article 9** of ICCPR lay down that no person shall be subjected to arbitrary arrest, detention or exile. **Article 22** of the Constitution of India protects an individual in the event of arrest and detention and thereby incorporates the mandates of both the UDHR and the ICCPR. Advancing the mandate of these United Nations documents and of the Constitution of India, the Supreme Court in a landmark judgement in *D. K. Basu v. State of West Bengal*⁷⁷ held that any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution irrespective of whether it occurs during investigation, interrogation or otherwise and that in every case wherein a man is wronged and damaged, he shall be recompensed. The Court further observed that custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law. Likewise, in *Nilabati Behera v. State of Orissa*⁷⁸ the Supreme Court, describing custodial death as a barbaric criminal act, awarded compensation of Rs. 1,50,000 to the mother of the deceased who died in police custody due to beating. In these cases, the Apex Court judicially evolved a right to compensation for established unconstitutional deprivation of life or personal liberty.

The amount of compensation to be awarded by the Court will depend upon the facts and circumstances of each case. The damages to redress the wrong for the established infringement of the fundamental rights of the citizen under the public law jurisdiction is held to be in addition to the traditional remedies and not in derogation of them. However, the liability of the State to pay compensation for the infraction of the fundamental rights to life, liberty and dignity of the individual has been recognized and established as a part of the public law regime. In its landmark pronouncements, the Supreme Court, in cases of *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*⁷⁹ and *Nilabati Behera v. State of Orissa*⁸⁰ laid down the constitutional and juristic foundations of such liability of the State. Rejecting the claim of sovereign immunity originating from the State discharging sovereign functions, the Court held that it is no defence at all against the acts of the infringement of the constitutionally guaranteed fundamental human rights.

Human Rights Commissions constituted under the **Protection of Human Rights Act, 1993**⁸¹ may award an immediate compensation to victims or their families. This interim relief is paid so that money may be made available to victims without unreasonable delay for their rehabilitation. Such an award of compensation will not affect the right of the victim to claim further compensation in Court by filing a civil suit against the offender. Under this Act, complaints about serious human rights violations, such as, custodial death or violence, rape, illegal detention, kidnapping, insults to personal dignity, negligence by government agencies would qualify for payment of immediate compensation. The recommendation to pay immediate compensation under the Protection of Human Rights Act, 1993 is made either to the government under whose jurisdiction the infringement has taken place or to the government which controls the agency liable for such infringement. The quantum of immediate compensation may vary from case to case depending upon the facts and circumstances of each case. Having paid the immediate compensation amount, the concerned government may recover the same from the guilty government officials.

In a leading decision in *Custodial Torture of Rakesh Kumar Vij by Uttar Pradesh [UP] Police* [NHRC Case No. 12982/96-97], the National Human Rights Commission [NHRC] directed the UP Government to set up a Medical Board to examine the extent of physical injury or disability sustained by the victim because of torture by the UP Police. The Medical Board so constituted gave a report stating that the victim did not sustain any gross structural injury. On the receipt of serious doubts raised by the victim about the findings of the Medical Board, the NHRC thereupon had the victim examined by the Delhi Trauma and Rehabilitation Centre which gave a report different from that of the Medical Board. The NHRC, therefore, directed the UP Government to pay the victim Rs. 10 lakhs by means of immediate compensation and to arrange for the complete medical treatment of the victim and to bear the expenses thereof.⁸² Accordingly, the NHRC recognised the right to compensation and rehabilitation of victims in a holistic way.

4. Suggestions and Conclusion

It is axiomatic that the gamut of victim justice in India is as significantly increasing as across the world. Although the present-day discourse on victim justice puts emphasis on rights-based approach for empowerment of the victims of crime, much is yet to be done for recognizing the rights of the victim in par with those of the accused under the criminal justice process. To the end, victims of crime shall be accorded statutory rights empowering them to participate in the criminal justice delivery process as one of the stakeholders by means of legal empowerment, enhancing accessible health services, facilitating monetary support and evolving policies and schemes for their rehabilitation.

Since the paramount object of the criminal justice process is to promote and maintain public confidence in the administration of justice, it is the need of the hour to give a well-defined status and an important role to the

⁷⁷ AIR 1997 SC 610.

⁷⁸ (1993) 2 SCC 746.

⁷⁹ (1981) 1 SCC 608.

⁸⁰ *Supra* note 68.

⁸¹ Act 10 of 1994.

⁸² National Human Rights Commission, "Annual Report" (1996-1997).

victim of crime under the criminal justice system. Victim's interest in getting the offender punished can not be disregarded and entirely subordinated to the social control by the State. Neither at the stage of framing a charge against the accused nor at the time of passing an order of discharge or acquittal is the victim of crime consulted. Never is he consulted during the trial of the accused.

To effectively respond to the interests of the victims of crime, it is pertinent to ensure that they play a key role during investigation as well as trial. The deficiency in the existing statutory scheme is that once an investigation begins, the role of the victim will become very limited to that of a witness. In addition, the investigating officer innumerable times proceeds very slowly on investigation; thereby losing out on the opportunity to collect important evidence.

There are some weakness in the establishment and functioning of victim compensation scheme. Firstly, few accused persons are, in fact, apprehended and convicted. Secondly, most of them are not in a position to pay such compensation amount as specified by the Court to the victim since they typically come of the lowest strata of society and besides the earnings by the offender as a prisoner would not be adequate enough to pay the same. As victims and offenders, in most of the cases, are generally poor, compensation can not alleviate the plight of the victim of crime. Therefore, it is necessary to establish a consolidated state funded victim welfare fund, on a statutory basis, which should be designed to meet both immediate monetary assistance and compensation.

The purview of compensatory jurisprudence has often supplemented by the constitutional provisions to do complete justice, by the Court, in cases wherein the existing provisions proved insufficient. Hence, an effective compensatory jurisprudence should be evolved to wipe out the tears of the victims of crime. Towards the end, it is imperative to make an amendment to the Constitution of India so as to ensure constitutionalisation of victims' rights to compensation. The recognition of victims' rights under the constitution of India would alleviate the woes of the victims of crime in the common-law system of justice in a holistic manner. Further, being an individual with rights and dignity, a victim of crime requires recognition as a person before the law. Over the years, the Indian compensatory jurisprudence has gradually evolved. The victim compensation law as it stands after the introduction of **Section 357A** into the Cr.PC is holistic. However, if the Court seldom invokes the law contained in **Sections 357 and 357A**, the same will remain meaningless and become obsolete. Law should cast a mandatory duty upon the Court to apply its mind to the question of compensation; the judges' discretion would not be the vanishing point of victim compensation law.

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