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VICTIM COMPENSATION AND REHABILITATION IN INDIA

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ABSTRACT

Victimization is for the victims of crime who are harmed not only physically but emotionally and mostly financially. For the rehabilitation of the victims, victim compensation, and various services play a major role. This research is a study of various schemes and compensation for the development for example the adequate compensation and support services to the victim is for an effective criminal administration.

This paper analyzes the Indian constitution, Indian judiciary, and the provisions related to the payment of compensation to the victims of crime. Section 357A of Criminal Code of Procedure, 1973, makes it compulsory for the state to provide compensation and rehabilitation to the victims of the crime. All the states of the country have to provide adequate compensation according to the scheme.

Keywords: Victim's, compensation, Code of Criminal Procedure, Indian Constitution, Supreme court and High court

INTRODUCTION

“There is a place in our courts for the judge, the accused, the lawyer and the witness. But there is no seat for the victim though his plight remains central to the case”- Sr Adv. KTS TULSI¹

The criminal justice system in India is mostly criticized for its unconcerned approach towards the victim of crimes by scholars and common people². Apart from legislation, the constitutional court has issued a process for the prevention of problems like overcrowding in the jail, custodial violence and lack of legal help to accused, lack of medical facilities, and mismanagement of prisons. The development of victim rights has evolved from time to time as in ancient times, the king was considered as the guardian and it was his responsibility to provide justice to the victims. In medieval India, most of the time was under Islamic rule and they had different provisions for the compensation of victims. Mughal rulers like Akbar and Jahangir were known for their fine sense of justice. In the global aspect, the study of victim rights and victimology in the general aspect began just after the Second World War.

In India, prof. Dr. K. Chockalingam was known as the first one to give awareness in the discipline of victimology. His development and contribution in this field can be translated from the fact that he, even before the UN Declaration of Basic principles of justice for the victims of crime and abuse of power which came into existence, published a book “Readings in victimology”. He also established the Indian society of victimology (ISV) later in the University of Madras in 1992. Based on the ideas and the advice given by the society the government of Tamil Nadu in 1996, he started a Victim Assistance fund. The ISV Draft bill on victim assistance in collaboration with National Law School, Bangalore (NLSIU), and BHRC was another significant development³. In 2009, 2010 and 2013, Criminal Law was amended and various victim-friendly measures were included and the victim compensation scheme in the criminal code of procedure was considered mandatory. Compensation to the victims is an essential right to them and it’s the duty of the state to ensure that the victims are able to enjoy those rights.

1.1 Research Background

¹ Bhavna Vij-Aurora V For Victim Outlook, <https://www.outlookindia.com/magazine/story/v-for-victim/230930>

² Srinivasan, M. and Eyre Mathew, J. (2007). Victims and the Criminal Justice System in India: Need for a Paradigm Shift in the Justice System. [online] Cite seer X, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.429.8305&rep=rep1&type=pdf>

³Law Commission of India, 154threport, (1966).

After the Islamic seizure in India, the society had a strong influence of Sharia and the holy Koran as they were considered as the ideals of justice. The modern criminal system evolved with time in the latter half of the nineteenth century when Lord Macaulay decided to draft a uniform penal code for British India.

Various judicial judgments have also strengthened and made significant contributions. In various cases, victims were given relief under Article 32 of Indian constitution by the Supreme Court of India and under Article 226 in the High Courts. Compensation to the victim is mentioned in the Indian legal system in the Prohibition of Offenders Act, 1958, Code of Criminal Procedure, 1973, the Motor Vehicles Act, 1988, and the Scheduled Caste and Scheduled Tribes Act, 1989. Later the Section 357 of Cr.P.C. was formed by the law commission of India in 1969. The Cr.P.C. was amended in 2008 and the Victim Compensation Scheme was introduced as Section 357A. Again the amendment was made in 2013 and two new sections were formed 357B and 357C in Cr.P.C. forgiving additional assistance given to compensation to the victims of acid attacks under section 326A, and Gang-rape victims under section 376D of the Indian Penal Code.

In India, shallow/hostile arguments are mostly used as a means for harassment. It is considered to be simple for people to settle scores with their enemies by filing false cases by simply registering false accusations. The section like 250⁴ of the criminal procedure code helps the person to get compensation for an accusation without reasonable cause. Some other sections like 358 provide remedy in which the court might ask one person to pay compensation to another person for causing wrongful arrest. Although the relief provided shall be of rupees 100, which would not even cover the cost of paperwork.

"OUR MISSION YOUR SUCCESS"

One of the most interesting and often overlooked aspects of victim rights is that they are the rights of the people who are wrongfully convicted and jailed. India being a common law nation, has got its legal system from British Raj and it is quoted by the Supreme Court "it is better that ten guilty persons escape than that one innocent suffer."

The status of a wrongfully convicted person who is jailed is depressing as they are not even declared as victims under any statute.

⁴ The Criminal Procedure Code, 1973. §250.

1.2 Research background and methodology

In this article, the researcher has taken the doctrinal mode of research that is online research. Reference has been taken from various acts like The Constitution of India, Code of Criminal Procedure, 1973, articles, books and various other databases such as online sites. As study is about the “victims in the society”, the research is considered to be socio-legal.

1.3 Statements of Problems

It is noticed that the rights of accused are mostly given supremacy against the rights of the victims. The odds for the accused getting away with crime is way more than the odds for a victim getting justice. Various amendments were made like the 2005 amendment in Cr.P.C. and criminal law amendments in the years 2008, 2010, and 2013 respectively. However, the focus has again shifted towards the victim.

In the absence of a proper definition of “victim”⁵ and victim rights which are not categorized properly has resulted in the debarment of victims from the process of fair and free trial. Although amendments made in Cr.P.C. and Criminal Law have added several new provisions for the protection of rights of victims, the uncaring outlook of the system is a team without the proper coordination between the Union Government and state that has led to the non-fulfillment of the purpose. It should be taken in consideration that various provisions have been introduced for the victim compensation and rehabilitation including the Victim compensation scheme under section 357A of Cr.P.C.⁶.

The criminal justice system is not able to ensure the safety of victims. It is a team with problems like secondary victimization and an indifferent viewpoint of police, judiciary, and the government. The judiciary is given the role to provide compensation to the victims as one of the most important jobs as it is helpful for the victim compensation and rehabilitation. Some remedies are provided under several provisions like section 375 of Cr.P.C. and articles 32 and 226 of the Indian Constitution.

⁵ The Code of Criminal Procedure, 1973, Act no. 2, 1974, India Section 2 (wa)

⁶ Anusree A, *Right to Compensation of Victims of Crime in India: Need for a Comprehensive Legislation*, LB, <https://thelawbrigade.com/wp-content/uploads/2019/05/AnusreeA.pdf>

2. CONCEPTUAL UNDERSTANDING

2.1 Victimology: Meaning and concept

The term was originated in the year 1947 by Benjamin Mendelsohn⁷, although it was mentioned in Wertham's book the show of violence⁸ for the first time. It is a combination of the Latin word 'victima' which means victim and the Greek word 'logos' which means a system of knowledge. The victimology is for victims in the same way as criminology is for criminals.

Randhava⁹ says that victimology is a body of knowledge related to victims. Victimization is how society reacts towards victim rights. He also explained that the victimology is versatile in nature as it derives its knowledge from many fields like law, psychology, polity, education, and sociology.

Drapkin and Viano gave a wide and blur definition where everything connected with the victims of crime is an essential subject of victimology.

Daigle¹⁰ defines victimology as 'The study of etiology of victimization, its consequences, how the criminal justice system accommodates and assists victims, and how other elements of the society, such as the media deal with the crime victims.'

His definition has a wider scope and it fits in the modern scenario.

2.2 Historical development in victimology

⁷ Mendelsohn is often referred to as the father of Victimology.

⁸ GC Kirchoff, Victimology: A Theory with Consequence, Global Victimology: New Voices 86

⁹ Gurpreet Singh Randhava, Victimology & Compensatory Jurisprudence

¹⁰ Leah E Daigle, Victimology- A Text/Reader

As humans have evolved with time into various clans, tribes, and states, the responsibility of giving justice shifted from an individual to a collective group with the time.

In the era of ancient and medieval period, the justice system was based on the dharma and morality¹¹. As it was the duty of the king to provide justice to the victims. This system acted as deterrence for the state officials thereby preventing corruption and abuse of power, “if the king could not restore the stolen articles or recover their price for the owner by apprehending the thief, it was deemed to be his duty to pay the price to the owner out of his own treasury, and in his turn he could recover the same from the village officers who by reason of their negligence, were accountable for the thief’s escape.”¹²

An old chapter in the legal system of India was identified and developed after the invasion by the Mohammad Ghorī, it led to the foundation of the Muslim rule in India. Although the Delhi Sultanate got its prestige under some Sultans, but they did not achieve a similar criminal justice system.

One of the most important periods in Indian history and the most illustrious was the Mughal Empire. The actual and notable changes came when the Great Akbar came into power. He prohibited slavery system and decided to have a common justice system for all. The strict Islamic impiety laws were reduced and death sentences for basic criticism were prohibited. Jahangir was one of the most known Emperors in the area of justice. He hung the ‘Golden bell of justice’ outside his palace and anyone who had faced any kind of injustice can ring the bell to get justice from the Emperor himself. Aurangzeb, the last effective and known Mughal ruler took a step backward by applying Sharia in the empire. He re-introduced the law by demolishing the religious tolerance policy made by Akbar.

¹¹ Dalbir Bharti , *The Constitution And Criminal Justice Administration*, (2002)

¹² P Sen, *General Principles of Hindu Jurisprudence*, Tagore Law Lectures, 335, (1984).

At the time of the early modern period, the British were confused by the numerous divisions done in the society and the complexities of the Hindu civil war. The Muslims were treated on the basis of Muslim rule and Hindu governance was done through shastras.¹³

3.VICTIMS IN THE CURRENT SCENARIO

3.1 Who are the victims?

Before going after the legal definition of the word victim, it would be better to look into the background of the term, the word the victim had been derived from the Latin word 'victima' which means victim.¹⁴ "Victim is an individual who is a passive recipient of misfortune"

Dussich¹⁵ found out that how and when the term 'victimia' was used and it was used in the context of human sacrifice in 1536 and it was applied to Jesus Christ in John Calvin's Protestant textbook 'Institute Christianae religios' and translated in many languages like German, English, French and etc. from original Latin¹⁶. The first-ever use of the word victim in the English language was done in 1736 for the Crucified Jesus Christ- in a translation of the New Testament. The present definition given by the Cambridge dictionary is "someone or something that has been hurt, damaged or killed or has suffered, either because of the actions of someone or something else, or because of illness or chance."¹⁷



3.1.1 Victims as defined in India

In India, the definition of victim was not mentioned in the original Code of Criminal Procedure, 1973 but after the Amendment made in Criminal Law in 2008, the new section 2(wa) was added and this section defines a victim as: "victim" means a person who has suffered any loss

¹³ Madhu Kishwar 'Codified Hindu Law: Myth and Reality' E&PW 1994 Vol. 29, No. 33.

¹⁴ Editor, *victim*, Oxford English Dictionary, <https://en.oxforddictionaries.com/definition/victim>

¹⁵ John P. J. Dussich, Ph.D. Professor Emeritus California State University, Fresno

¹⁶ John P.J. Dussich, *The Evolution of International Victimology and its Current Status in the World Today*, 1, Revista de Victimologia / Journal of Victimology, 40-41

¹⁷ Editor, *Victim*, Cambridge English Dictionary, <https://dictionary.cambridge.org/dictionary/english/victim>

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 heir¹⁸.

The Supreme Court and the High Court already had the extremity of victims and the rights of their legal heirs and dependents.

The judgement given by Delhi High Court in the case Ram Phal vs the state and Ors¹⁹. dealt with this problem. According to hon'ble High Court, 2 questions have to be decided which are:-

1. The word victim in section 2(wa) of Cr.P.C. which says that only the legal heir is qualified to the property of the victim under the law of inheritance or would accept any person who has suffered any loss or injury caused by any act or omission for which the accused person has been charged.
2. The remedy to the applicant is available with respect to any offence which was committed as on the date when the appellate right was communicated by law or appellate right would be available with respect to the date of decision or any remedy given to appellate which is without any reference to the two points of time which is:
 - The date when the offence was committed
 - Appellate right was communicated by law

At the time of these two questions, the court decided to go through the legal history of the victim rights. It took the help from its division bench's decision in Chattar Singh vs Subhash and Ors.²⁰. On the first question, the court departed from its earlier decision and went with the decision made by Punjab and Haryana High Court in case Tata Steel vs Atma Tube Projects²¹ by stating, “victim cannot exclude those who actually fell within the definition of victim by virtue of emotional harm suffered such as the father or siblings of a deceased victim or other categories of persons.

¹⁸ Section 2 (wa), Code of Criminal Procedure 1973 (as amended in 2008).

¹⁹ 154th Report of Law Commission of India; Committee on the Reforms of Criminal Justice System, 2003.

²⁰ Chattar Singh v. Subhash and Ors., (2011) 176 DLT 356.

²¹ Tata Steel v. Atma Tube Projects CRM-790-MA-2010 Punjab and Haryana HC

On the second question, the court held that the right to appeal is considerable right. It helps by quoting the judgement of Apex Court²² and various High Court.

3.2 Various Kinds of Victims

Victims are classified into various types like primary, secondary and tertiary victims but mostly it is classified on the nature of the offending Act. Taking into the account various situations, it includes age, sex, race, mental and physical capacity and etc. although there are many other non-orthodox victims such as victim of socio-economic crimes, victim of organized crimes, etc.

3.2.1 Victims of violent crimes

There are few specific crimes mentioned in IPC as violent crimes.

- Murder (Section 302 IPC)
- Culpable Homicide (section 304 IPC)
- Dowry Death (section 304B IPC)
- Attempt to commit Murder (section 307 IPC)
- Attempt to commit Culpable Homicide (section 308 IPC)
- Kidnaping & Abduction (section 363-396 IPC)
- Rape (section 376 IPC)
- Attempt to commit Rape (section 376 and 511 IPC)

Around 94.6% cases of rape that were reported last year, the criminal was known to be the victim.

3.2.2 Victim of Socio-Economic Crimes

The socio-economic crimes are one of the most ignored crimes in India. They are known as white-collar crimes which are increasing at a high rate in the current scenario. The 29th report of the Law Commission of India, 1966²³, decided to include certain socio-economic crimes in the Indian Penal Code. The report further categorized the types into:

²² Thirumalai Chemicals Ltd. v. Union of India (2011) 6 SCC 739; Hitendra Vishnu Thakur v. State of Maharashtra AIR 1994 SC 2623; Kailash v. Nanhku and Ors. (2005) 4 SCC 480; H.P. State Electricity Regulatory Commission v. H.P., (2014) 5 SCC 219.

²³ Law Commission of India, 29th Report, (1966), <http://lawcommissionofindia.nic.in/1-50/Report29.pdf>

- Offences preventing economic development
- Misuse of public position by public servants
- Adulteration
- Theft and misappropriation of public property and funds
- Trafficking in licenses

3.2.3 Victims of abuse of power

Abuse of power simply means 'official misconduct'. The abuse of power refers to such acts done by the elements of the executives, especially police by performing Arbitrary arrest, custodial torture, force confession, custodial deaths and false imprisonment are few of the examples of abuse of power by the state. Other than this victims can be classified into:

- Victims of custodial death
- Victims of death due firing
- Victims of groundless arrest and detention
- Victims of unnecessary harassment

3.3 Right of Victims

Victim rights at the International level have developed over the years. As already highlighted, the return of the victim into the accused centric criminal justice system did not commence until the latter half of the 20th century. Victim rights at the International level have developed over the years. International organizations such as the United Nations, and International Courts (ICC, ICTY, and ICTR) have played an important role in its development. It may be inferred from the 1985 UN Principles which categorize victim rights into 4 major heads:

1. Right to Access to justice and fair treatment
2. Restitution
3. Compensation
4. Assistance

4. VICTIM COMPENSATION AND REHABILITATION

4.1 The concept of compensation and its evolution

The definition of word compensation given by the oxford dictionary is “something, typically money, awarded to someone in recognition of loss, suffering or injury”²⁴. In today’s scenario, the word means something that is granted to make good for the loss or injury caused. The decision made by the Supreme Court of India in the case of Shantilal²⁵ said that “In ordinary parlance the expression compensation means anything given to make things equivalent; a thing is given to or to make amends for loss recompense and remuneration or pay.”

On the other hand, rehabilitation is a vast term that includes other aspects of victim right. It consists of compensation, restitution, victim assistance and access to justice and fair treatment²⁶.

4.1.1 Why Compensation?

There are so many answers to this question. There are various reasons like psychological, social, and economic reasons for the compensation to victims. It is common knowledge that how crime affects the mental health of victims. The mental health of a victim is affected due to many reasons like constant visits to the police station, court, and lawyer which can break a person. The insensitivity of the society leads to secondary victimization of the victim. A day spent at a court or any police station can lead to income loss of that particular day. So the actual motive of compensation is to provide relief to the victims.

4.1.2 Victim Compensation in India

The history behind these provisions especially section 357 can be taken from the old code of 1898. The sections like 545 and 546 of the old code²⁷ which were taken as the provision for compensation are as follows:

²⁴ Editor, Compensation, Oxford Dictionary, <https://en.oxforddictionaries.com/definition/compensation>

²⁵ State of Gujarat v. Shri Shantilal Mangaldas &Ors, AIR 1969 634.

²⁶ Barcelona Panda, *Victim’s right to rehabilitation: India, UK and US Experience*, Manupatra, <http://www.manupatra.com/roundup/348/Articles/Article%20Victim.pdf>

²⁷ The Code of Criminal Procedure, 1898, (India).

Section 545 – power of court to pay expenses or compensation out of time

Wherever under any law forces for the time being a Criminal Court imposes a fine or confirms in appeal revision or otherwise a sentence of fine, or a sentence of which fine form a part, the Court may, when passing judgment order the whole or any part of the fine recovered.

Section 546 – Payment to be taken into the account in subsequent suit.

At the time of giving compensation in any subsequent civil suit relating to the same matter, the court shall take into the account any sum paid or recovered as compensation under section 545. Later an amendment was made in 1955²⁸ which added 545(1) empowering the court to direct an accused who has caused the death of another person, to pay compensation to the legal heir entitled under the Fatal Accidents Act.

4.1.3 Recommendation of Law Commission

The Reports of the Law Commission of India highlighted these problems. In its 41st Report²⁹, it recommended the deletion of ‘substantial’ from section 545(1) (b) as the criminal Courts have underutilized their discretion in granting compensation under this provision. Another notable suggestion was the enhancement in power of the Judicial Magistrate to impose fines up to ₹5000 for JMIC and ₹1000 for JMIIC. The report³⁰ notes that victim reparation has come into the limelight in the previous years and the realization has dawned that mere punishment to the offender may exhaust the role of criminal law, but it doesn’t completely fulfill the role of law. Further, it quotes “The injured party is not always adequately served by civil courts, and in the criminal law he often takes a back seat. Having given his evidence, he stands aside and watches the offended majesty of public justice being satisfied by conviction and sentence. He himself is fortunate if he gets compensation, or even his expenses. Often, he must have recourse to the civil courts to

²⁸ The Code of Criminal Procedure, 1898, (Amendment) Act, Act 26 of 1955, (India).

²⁹ Law Commission of India, 41st Report, 356,(1969), <http://lawcommissionofindia.nic.in/1-50/Report41.pdf>

³⁰ Law Commission of India, 42nd Report, 50, (1971), <http://lawcommissionofindia.nic.in/1-50/report42.pdf>

reclaim his property, and, not infrequently, may have suffered a loss or injury for which he cannot be recompensed.”

The report then highlights the gradual diminishing of the concept of victim reparation and how the civil proceedings became ancillary to the criminal trial i.e. the State started giving primacy to penal action instead of reparation part. Three patterns of compensation were listed by the commission:

1. State may take it upon itself (in certain defined class of cases);
2. Secondly, the offender can be sentenced to pay a fine by way of punishment for the offence, and, out of that fine; compensation can be awarded to the victim.
3. Thirdly, the court trying the offender can, in addition to punishing him according to law, direct him to pay compensation to the victim of the crime, or otherwise make amends by repairing the damage done by the offence.

4.1.4 Victim compensation scheme

The Criminal Procedure Code (Amendment) Act, 2008 added a new provision in Section 357A. This provision has been introduced to ensure that the victims and their legal heirs who have suffered loss or injury due to crime and those who require rehabilitation are provided with the same via a scheme (to be prepared by the State Government in coordination with the Government of India). The section is as under: “357A. (1) Every State Government in coordination with the Central Government shall 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.

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

Where the offender is not traced or identified, but the victim is identified, or 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.

On receipt of such recommendations or on the application under subsection (4), the State or the District Legal Services Authority shall, after due enquiry award adequate

compensation by completing the enquiry within two months. 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.”

Victim’s right to appeal against any order- In section 372 of the CrPC, the following proviso is inserted: - “Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicted for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”

4.2 Judicial analysis of Court’s power to grant compensation:

The compensatory jurisprudence under the Code has been explained in detail by the Apex Court in a single judgment. In its 2013 judgment of *Ankush Shivaji Gaikwad v. State of Maharashtra*³¹, the Court traced the history of the provisions of the Criminal Procedure Code with a comparative analysis of the position in the United States and the UK. This decision is significant as the Court has considered all past judicial decisions on this matter before passing its judgment. Some significant observations by the Supreme Court are as under:

1. On the question whether the Courts are under a duty to grant compensation under s.357 or give reasons despite the use of the word ‘may’ in the section, the Court observed that “..it appears to us that the provision confers a power coupled with a duty on the Courts to apply its mind to the question of awarding compensation. ” Quoting a plethora of judgments, the Court held that the intention of the Legislature is to be given primacy and due to a word, the victim should not suffer.
2. The purpose of this power of the Court is to “reassure the victim that he or she is not forgotten in the criminal justice system”
3. The position of the accused is relevant to determine the amount of compensation and an enquiry should be made for the same (unless it gets clear in the course of the trial)

4.3 Provisions in other laws

³¹ *Ankush Shivaji Gaikwad v. State of Maharashtra* (2013) 6 SCC.

4.3.1 Probation of Offenders Act, 1958

The Probation of Offenders Act, 1958 is a legislation that provides for the release of convicts in certain cases where the offence committed is not punishable by death or life imprisonment after due admonition. The purpose of this Act is to give another chance to the offender to mend his/her conduct and prove that he/she is capable of living in the society. Despite being a practical and innovative scheme to ensure reformation over deterrence, this legislation has not realized its true potential. Moving to the present context, the section 5 of the Act is reproduced below:

“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 think 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 prosecuted³², shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.” The section provides for compensation to the victim by the offender in case he is being released on probation under section 3 and 4 of the Act.

The judgment further analyses the section and holds that although the section 357 of Cr.P.C. and section 5(1) of this Act are similar, the payment of compensation in both sections is entirely different. In Cr.P.C. the payment of compensation is preceded by the imposition of fine, out of which it is to be paid. On the other hand, under this Act, the offender has to pay the compensation at the end of the trial. The section further mandates any Civil Court in which a suit for damages has been instituted shall take into consideration the amount paid to the victim which indicates that the compensation so awarded is of the nature of civil liability. Further, the section provides the method of recovery of the fine (compensation) in which it mentions sections 386 and 387 of the Code. However, these sections are of the old Cr.P.C. and the corresponding sections in the new Cr.P.C. are sections 421 and 422. The judgment makes it clear that the method of recovery cannot

³² Section 5, Probation of Offenders Act, 1958

equate 'compensation' with 'fine'. Citing the Supreme Court decisions in cases of *Gurbachan Singh v. State of Punjab*³³, the Court made it clear that there is a 'marked distinction' between the award under section 5 of the Probation of Offenders Act and Section 357 of the Cr.P.C. and costs awarded under the former have no such penal element.

In a decision of Patna HC, the Court held that compensation under Section 5 is at the discretion of the court. The court will allow compensation and costs only when it thinks fit in any case and the appellate court cannot interfere with the decision of the lower court unless it is capricious or unreasonable³⁴.

4.3.2 Motor Vehicles Act, 1988

The Motor Vehicles Act was brought to address the problems arising out of an increase in the number of vehicles, the deplorable status of roads, lack of knowledge, and road sense in drivers. To prevent the ever-increasing accident rate, the Act was brought in to replace the old British Raj-era law. Section 140³⁵ of this Act provides the rationale behind the compensation. Under this section, the owner of the motor vehicle has to pay a specified amount as compensation if death or permanent disability is caused. This section is significant as the compensation paid is on the basis of "no-fault liability." However, the amount paid is a meager Rs. 50,000 in case of death and Rs. 25,000 in case of permanent disability. Section 163 of the Act provides for compensation in hit-and-run cases. It lays down the power of the central government to enact schemes and the formation of administrative bodies and its procedure thereof. Section 166 provides for compensation on fault basis i.e. the negligent act has to be proved. Another significant provision added later via the Motor Vehicles (Amendment) Act, 1994 is the section 163-A. This section was introduced to provide compensation on no-fault liability principles in a structured form. Several factors serve as parameters to determine the amount of compensation- such as age, annual income, profession, education, etc. However, the 2018 amendment³⁶ passed by the central government has limited the compensation in case of death to a fixed amount of rupees five lacs and in cases of disability, the maximum amount is also 5 lacs. For minor injuries, a fixed amount of Rs. 25,000 has been prescribed.

³³ *Gurbachan Singh v. State of Punjab*, AIR 1957 SC 623.

³⁴ *Rajeshwari Prasad v. Ram Babu Gupta*, AIR 1961 Pat 19.

³⁵ S. 140, The Motor Vehicles Act, 1988, (India).

³⁶ Government of India, *Gazette Notification no. 1829 of May 22, 2018*, ITTA, <http://www.ittaindia.com/wp-content/uploads/2018/05/GAZETTE-NOTIFICATION-OF-22-MAY-18-UNDER-MOTOR-VEHICLE-ACT-compensation- on-death-injury.pdf>

4.3.3 Fatal Accidents Act, 1855³⁷

The purpose of the Act is stated as “..To provide compensation to families for loss occasioned by the death of a person caused by actionable wrong”. The Act provides compensation for the tort resulting in death of the victim. The claims under this Act are subject to be determined on a case to case basis³⁸. However, these claims are subject to limitation as per section 82 of the Limitation Act³⁹.

5. CONCLUSION AND SUGGESTIONS:

5.1 Research findings

- ‘Victim’ under Indian law is only defined in Cr.P.C. and the definition does not have a wide scope. It does not recognize all types of victims (eg. victims of abuse of power)
- The provisions of the Criminal Procedure Code, 1973 are still inadequate in providing an effective compensation and rehabilitation mechanism to the victims.
- There is a lack of clarity regarding the mechanism and working of the Courts, Legal Service Authority and the State government with respect to the compensation and rehabilitation.
- Individuals who have their fundamental rights violated due to the misconduct and wrong committed by the servants of the State have no effective right to compensation or rehabilitation.
- The International obligations with respect to victim’s rights (especially compensation and rehabilitation) as reflected in 1985 UN basic principles and ICCPR have not been met by India.

5.2 Hypothesis analysis

The hypothesis of the research, which is **“The existing framework of the Indian Criminal Justice System is inadequate in terms of providing compensation to the victim in a uniform manner. Despite amendments to the Cr.P.C. and various judicial decisions, the actual state of the victim in the system remains dismal. Abuse of power by the State needs to be addressed at the earliest as the wrongful convictions and detentions despite being rampant, are the least concern of the State.”** stands proved through the research. Throughout the study, it has been established that the Criminal Justice System as a whole suffers from inadequacies. Despite several

³⁷ Fatal Accidents Act, 1855, Act 13 of 1855, (India).

³⁸ Sardar Ishwar Singh v. Himachal Puri, AIR 1990 MP 282.

³⁹ Damini and anr. . v. Managing Director, Jodhpur Vidyut Vitran Nigam Limited (2017) SCC OnLine SC 1105.

changes in the law and introduction of new schemes, the Courts, police, and other institutions remain entangled in their perennial insensitivity towards the victims. Abuse of power, especially wrongful convictions and detentions are not addressed by the State despite international obligations arising out of the UN Basic Principles and ICCPR. No law or scheme provides any right to compensation for unfortunate victims of abuse of power.

5.3 Suggestions:

The researcher has attempted to highlight the inadequacies and issues in the existing framework for victim compensation and rehabilitation in India and the problem of abuse of power. The researcher shall now attempt to propose how the victim compensation and rehabilitation may be improvised.

Several problems in the victim compensation under the Cr.P.C. have been identified over the course of this research. As far as the problem of abuse of power is concerned, the National Commission to review the working of the Constitution in its 2002 report proposed a few points. The commission was of the view that the Supreme Court in the cases of Nilabati and DK Basu has made it clear that for violation of fundamental right under Article 21; there exists a right to compensation as a public law remedy. It cited the Article 9(5) of ICCPR that mandates compensation to individuals who have been groundlessly arrested and notes that India has maintained a reservation to the same.⁴⁰

5.4 Concluding remarks

The plight of the victim, the inadequacies of the system, and the need for compensation and rehabilitation have been highlighted throughout the study. However, the need of the hour is not just confined to legislative reforms. It is a fact that the role of the victim is still confined to a secondary one. For instance the gruesome rape and murder cases (be it 2012 in Delhi or 2018 Kathua) highlight the fact that despite public outrage, the condition remains grim. The actions of the media, government, and other political parties shatter one's faith in humanity. Instead of empathic understanding of the ordeal of victims, those in positions of power use their plight to advance their own agenda. The criminal justice system and its constituents are in urgent need of

⁴⁰ Consultation Paper, *Enlargement Of Fundamental Rights*, National Commission To Review The Working Of The Constitution, GOI, (2001), <http://legallaffairs.gov.in/sites/default/files/%28i%29Enlargement-of-Fundamental-Rights.pdf>

an overhaul. In order to understand and help the victims, it is necessary that their pains be understood. The need for acknowledgment and support is sometimes more important than the monetary compensation. Legislative changes and reforms should be implemented accordingly. The major impediment is that the same personnel and the very same system cannot be expected to change dramatically due to changes in the law. It has been observed in several cases that the public opinion is instrumental in determining whether justice will be delivered or not. Media attention is another such factor. Therefore awareness and sensitization of both the public and the members of the criminal justice system is desirable. Compensation and rehabilitation of victims is the duty of the state and it should be held accountable for lapses and inefficiency in its implementation.



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