



## VICTIMS RIGHTS AND CRIMINAL LAW -AN ANALYTICAL STUDY

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**Abstract:** *criminology and criminal law, a victim of a crime is an identifiable person who has been harmed individually and directly by the perpetrator, rather than by society as a whole. However, this may not always be the case, as with victim of white collar crime, who may not be clearly identifiable or directly linked to crime against a particular individual. Victims of white collar crime are often denied their status as victims by social construction of the concept. The concept also remains a controversial topic within women's studies. The Supreme Court of United States first recognized the rights of crime victims to make a Victim Impact Statement during the sentencing phase of Criminal trial in the case of Payne v. Tennessee 501 U.S 808 (1991). A victim impact panel, which usually follows the victim impact statement, is a form of community based or restorative justice in which the crime victims (or relatives and friends of deceased crime victim) meet with the defendant after conviction to tell the convict about how the criminal activity affected them, in the hope of rehabilitation or deterrence. Victimology is the study of victimization, including the psychological effects on victims, relationships between victim and offenders, the interactions between victims and criminal justice system-that is, the police and Courts, and corrections officials and the connection between victims and other social groups and institutions, such as media, businesses, and social movements.<sup>1</sup> While we talk about the consequences of crime, emotional distress as the result of crime is a recurring theme for all victims of crime. The most common problems effecting three quarters of victims, were psychological problems, including; fear and anxiety, nervousness, self blaming, anger, shame and difficulty in sleeping.<sup>2</sup> These problems often result in development of chronic post traumatic stress disorder (PTSD), Post crime distress is also linked to pre-existing emotional problems and socio demographic variables, This has been known to become a leading case of the elderly to be more adversely affected. The environmental theory posits that the location and context of the crime bring the victim of the crime and its perpetrator together<sup>3</sup>. Ibi jus ibi remedium- Where is there is a right there is a remedy if any one's right is viloted then there is definite remedy available in civil law as well as in form of punishment in criminal law. Victim rights to be inform, present and heard victim criminal justice system. The term crime victim refers to any person, group of entity who has suffered injury or loss due to illegal activity of someone. The harm can be physical and phsychological or economical. Such a person may be called a primary victim of crime. Besides, there are also secondary crime victim, who suffer harm or injury to the primary crime victim. According to Quinney“ The victim is a conception of reality as well as object of events. All parties involeved in sequience of actions constructa realty of the situation.And in the large social contracts we all engage in commonsense construction of the crime.*

**Detailed analysis:** The United Capital Basic Principles Justice for Victim and Nations General Assembly Declaration of Abuse of Power, 1985<sup>4</sup> defined victim as,

<sup>1</sup> About victim rights - wikipedia

<sup>2</sup> For statutory protection of victim rights, see Cornal Law School Journal, US

<sup>3</sup> History of Victim Rights by National Crime Victim Law Institute

<sup>4</sup> Rights of the Accused – Criminal Defence Wiki.ibj.org



“victim” means a person who individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within member states, including those laws proscribing criminal abuse of power. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between perpetrator and the victim. The word ‘victim’ is defined in Code of Criminal Procedure, and it was added by the Criminal Law Amendment-2008, according to Sec.2 (wa) “victim” means a person who has suffered any loss or injury caused by reason of an act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir.<sup>5</sup> The foremost goal of a Criminal Justice System is undoubtedly the protection of individual life and liberty, property. The modern criminal law is supposed to repair the ambitions and norms of society as well as to punish and reform the criminals but it overlooks the victim. India derived its Criminal Justice System from British model, the penal philosophy in India has accepted the concept of prevention of crime and treatment and rehabilitation of criminals, which have been reiterated by many Judgements of Supreme Court.

Victims have no rights under Criminal Justice System, and the State under takes responsibility to prosecute and punish the offenders by treating the victims as mere witness. The term ‘Crime

Victim’ refers to any person, group or entity who has suffered injury or loss due to illegal activity of someone. The harm can be physical, psychological or economic. Such a person may be called as a ‘primary crime victim’ of a crime. Besides there are also ‘Secondary crime victim’ who suffers harm or injury or harm to the primary crime victim. Justice requires that a person who has suffered must be compensated. Basically, the accused is responsible for reparation of any harm caused to the victim. We have five statutes under which compensation may be awarded to the victim of crime, i.e Constitutional remedies for Human Rights, Code of Criminal Procedure, Fatal Accidents Act-1855, The Probation of Offenders Act-1955, The Motor Vehicles Act-1988.<sup>6</sup> The “victim” also includes where appropriate, the immediate family of dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. Under the Indian Criminal Justice System victims of crime have no rights as such, and state undertakes full responsibility to prosecute and punish the offenders by treating the victims as mere witnesses. Justice requires that a person who has suffered must be compensated. Basically, the accused is responsible for the reparation of any harm accused to the victim, we have five statutes, under which compensation may be awarded to the victims of crime. 1. The constitutional remedies for Human Rights Violation, 2. The code of criminal procedure, 1973.3. The Fatal Accidents Act, 1855, 4. The Probation of Offenders Act, 1958, 5. The Motor Vehicle Act, 1988.

Criminal Justice System seems to exist to protect the power, the privilege

<sup>5</sup> P.No.7, Code of Criminal Procedure, 1973 by Padala Ramareddy.

<sup>6</sup> Eurasia Review News & Analysis by Nida Zainab



and the values of the elite sections in society. The way crimes are defined and the system is administered that there is an element of trust regard to the dismal state of the criminal justice system in the country, the government appointed the Malimath Committee to suggest reforms to the criminal justice system. The Malimath committee report emphasizes on 'justice to victims' as one its primary objectives. It aims to provide equity to victims of crime by permitting them, as an issue of ideal, in criminal procedures and compensation. The UN Declaration recognized four major components of the right of victims of crime – access to justice and fair treatment, restitution, compensation, and assistance.

### **(B) Compensation Under Criminal Procedure Code, 1973:**

Access to justice is the availability of relief to the victim by various judicial or non-judicial institutions. The victims who set the criminal justice system in motion by giving information are left at the mercy of Station Inspector (SI) who sometimes even refuses to register the complaint. The victim as an informant is entitled to a free copy of FIR but most of the times it is not given. The position of women and children who happen to be a victim can be tragic especially in case of rape victims where delay in collection of samples can render the entire case baseless. Sometimes, the rape victims are being held in protective custody for taking evidence which has no legal basis. Even though, the accused is entitled to engage the advocate of his choice, the victim is not. Section 24(8) of CrPC provides that the court may permit the victim to engage an advocate of his/her choice to assist the

prosecution. Section 301(2) of CrPC mandates that any lawyer appointed by the victim shall act under the directions of the prosecutor and with the permission of the court may submit written arguments after the evidence is closed. Section 157 of CrPC laid down that in relation to the offence of rape, the recording of statement of the victim shall be conducted at the residence by a woman police officer in presence of A guardian. Section 164(1) provides that the audio-video confession can be given by the victim, not only with confession but testimony of witness may be recorded in an audio-visual electronic device. In *Sakshi v. Union of India*, the Supreme Court mandated 'in-camera' trials particularly when the victim is a child or rape victim to maintain their dignity.<sup>7</sup>

In *Nirmal Singh Kahilon v. State of Punjab*<sup>8</sup>, the Hon'ble Apex Court observed that the right to fair investigation and trial is applicable to the accused as well as the victim and such a right to a victim is provided under Article 21 of the Constitution of India. Ergo, a victim of a crime is equally entitled to a fair investigation.

In *Bodhisattwa Gautam v. Subhra Chakraborty*<sup>9</sup>, the Supreme Court held that if the court trying an offence of rape has jurisdiction to award compensation at the final stage, the Court also has the right to award interim compensation. The court, having satisfied the prima facie culpability of the accused, ordered him to pay a sum of Rs.1000 every month to the victim as interim compensation along with arrears of compensation from the date of the complaint.

<sup>7</sup> Justice Krishna Iyer, Hon'ble Judge, Supreme Court of India in his writing the Criminal Process and Legal Aid

<sup>8</sup> 2009 1 SCC 441

<sup>9</sup> AIR 1996 SC 922



Restitution can be defined as restoring to an earlier position or returning the stolen thing to the real owner. The right of victims to restitution has not gained statutory recognition. The courts have inclined to examine the plea of victims for redressal of the losses suffered during violent incidents including riots and cast clashes. The principle that is evoked is 'culpable inaction' under which the state instrumentalities are expected to anticipate the losses or damage to public and private property where the victims have no control. The courts have gone as far as to find the state liable only where a definite failure on its part has resulted in a loss.

In *R. Gandhi v. Union of India*,<sup>10</sup> the Madras High Court, acting on the report of a commissioner appointed by it to assess the losses directed payment of varying amount of compensation for the loss of property of Sikh community in Coimbatore.

The right of victim compensation has been well recognized under the CrPC but is available only where a substantive sentence of the fine was imposed and was limited to the amount of fine actually realized. Section 357(3) authorizes the magistrate to impose fine where fine has not been imposed. However, this section is invoked sparingly and inconsistently by the courts. The 152nd Report of the Law Commission had recommended the introduction of section 357-A prescribing inter alia that compensation should be awarded at the time of sentencing to the victims of crime amounting to Rs. 25,000/- in case of bodily injury, not resulting in death and Rs 1,00,000/- in case of death. Since the recommendation of the report had not been incorporated by the

government, the 154th Report mandated the incorporation of section 357-A.

The higher courts have established a base for victim compensation even in custodial deaths. The Supreme Court in *Nilabati Behra v. State of Orissa*<sup>11</sup> observed that "it was not enough to relegate the heirs of victims of custodial deaths to the ordinary remedy of civil suit". The right to get relief or compensation from public law courts exercising writ jurisdiction was explicitly recognized.

In *Balasaheb Rangnath Khade v The State of Maharashtra*,<sup>12</sup> the court observed: The criminal justice system has been designed with the State at the center stage. Law and order is the prime duty of the State. It fosters peace and prosperity. The rule of law is to prevail for a welfare State to prosper. The citizens in a welfare State are expected to have their basic human rights. These rights are often violated. The law and order is breached.

A citizen is harmed, injured or even killed as a result of the crime. He/she is a victim of an act termed an 'offence' in the criminal justice system. He/she seeks recourse to law and justice. Justice is given to him/her upon upholding the rule of law. It is denied to him/her upon any breach by the perpetrator of the violation or even by the defender of his rights - the State. The state of the victims in the discipline of victimology has gone far ahead in the west.

The victims have a right to speak and to be heard at all stages of the criminal prosecution bail, release, evidence, sentence and parole. The mischief that the State sought to remedy was the total neglect of the violation of human rights of victims {regarding

<sup>10</sup> AIR 1989 MAD 205

<sup>11</sup> (1993) 2 SCC 746

<sup>12</sup> on 27 April, 2012



compensation}. The State, in other words, sought to embark upon and to grant to the victims of crime their human rights. (Cr. Appeals 991, 992, 331 & 854/11)

The compensatory jurisprudence is based on crime is public wrong and sound principle of welfare state and Article 21 of Indian Constitution which lays down that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Similarly, right to property is guaranteed in Article 300A of the Indian Constitution as a constitutional right. Here its development of compensatory rights may be seen under three heads as (A) Compensation Under Public Law; (B) Compensation Under Criminal Procedure Code, 1973; (C) Delhi Victim Compensation Scheme, 2011.

#### **Compensation Under Public Law:**

The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting “compensation in proceedings under article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights 8, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen<sup>9</sup>. In *P.P.M.Thangaiyah v. The Government of T.N* (29-09-2006 )

Survey of the entire judgments of the Supreme Court as well as the other High Courts, on the question of award of compensation for violation of the fundamental rights, the following principles were deduced by the Madras High Court:

(1) The constitutional mandate enjoins upon the State to protect the person and property of every citizen and if it fails to discharge its duty, the State is liable to pay the damages to the victims.

(2) The failures or inactions on the part of the State which led to the violation of the fundamental right more especially under Articles 14, 19 and 21 of the Constitution of India should have been direct nexus to the damage caused/suffered.

(3) The State cannot claim defence of sovereign immunity in the guise of the discharge of the sovereign functions in the constitutional remedy. It does not clothe the State with right to violate the fundamental rights guaranteed under Part III subject to certain restrictions.

(4) The State while undertaking commercial activity cannot plead the sovereign immunity, in case of tortuous acts done by the employees of the State. It is only vicariously liable.

(5) The Supreme Court or the High Court are entitled to render compensatory justice by awarding reasonable monetary compensation under Article 32 or 226 of the Constitution of India, for the injury - mental, physical, fiscal - suffered by the individual for violation of fundamental rights guaranteed under the Constitution. But, however, it must be conclusively established that the State failed to take any positive action in protecting the fundamental rights of the citizens.

(6) It is not necessary that the victim should approach the Civil Court by invoking common law remedy for claiming damages for violation of the fundamental rights. The option is left to the victim to claim the damages by invoking either the constitutional remedy or civil remedy. Since the constitutional remedy is a public law remedy, the actual victim need not





approach the Court. The relief can also be awarded either by exercise of suo motu power or in a public interest litigation case.

(7) The quantum of compensation varies from case to case depending upon the nature of loss suffered by the victim. There cannot be any strait-jacket formula for awarding the compensation under Article 226 of the Constitution of India.

The long line of judicial pronouncement while the assassination of the Prime Minister of the country Mrs. Indira Gandhi a riot took place in Coimbatore which resulted into loss of property of Sikh community members. The incident took place because of failure on part of the State government.

A writ petition was filed for compensation in *R. Gandhi v. Union of India*.<sup>13</sup> The High Court accepting the prayer of the petitioner that compensation must be given on the basis of actual loss suffered observed:

The maintenance of law and order is the primary duty of the State and under our Constitution it is a State subject and tops of the State List. No government worth the name can abdicate this function and put the life and liberty, the hearth and the home of the citizen in jeopardy.

The Madras High Court while holding that the unfortunate victims of arson and violence were entitled to seek reasonable compensation from the state of Tamil Nadu which failed in its duty to protect these constitutional and legal rights observed:

The member of Sikh community form an integral part of the Indian society, they have every right to settle down in Coimbatore and carry on their profession. They have the constitutional right to live and they cannot be deprived of their

means of livelihood. Their right to protect is invoidable all these constitutional rights of Sikh and a few members of other communities have been flagrantly infringed by the inaction of the law enforcing authorities.

The fundamental rights are not mere brutum fulmen ... they are the throbbing aspiration and realities of civilized human life, they cannot be ... dead letter ... by the failure of the State to protect those rights.

In *R. Gandhi* case, the Madras High Court referred to Article 38 which enjoins on the state to promote the welfare of the people by securing and protecting the social order. Further, it took help of Article 19(1)(g), 21 and Article 300A of the Constitution and linked the right to property with life and liberty, and freedom of trade, occupation, profession. The court concluded that it was the duty of the government to protect these rights and the failure on the part of the government should result into compensation while must be reasonable keeps in view the actual loss suffered by the victims of said riot.

In *M/s S Inderpuri General Store v. Union of India*,<sup>14</sup> a communal riot took place in January 1989 in the city of Jammu and the petitioner belonging to Sikh community suffered losses and prayed for the issuance of a direction to the respondent to pay compensation to the extent of losses actually suffered by them. It was found that the communal violence broke out due to the alleged active connivance of anti-national and anti-social elements resulting in injuries and deaths of the Hindu and Sikh members. The communal riots were alleged to have been engineered by anti-social elements and forces and member of other communities.

<sup>13</sup> 11 May, 2010

<sup>14</sup> On 8<sup>th</sup> March 1991



The respondent State initiated all measures to curb and prevent anti-national and anti-social activities. The government granted ex gratia relief in favour of those persons who lost their properties. A committee was constituted to assess suffered losses of property and were granted ex gratia relief upto a maximum of Rs. 25,000/ and it was already paid to the petitioner.

It was submitted on behalf of the petitioner that their property was destroyed in the riot and the respondent authorities failed to provide them protection as is the mandate of the law and followed in our democratic, republic, socialist and secular State. The right of petitioner under Article 14, 19 and 21 of the Constitution. The respondent State argued that the petitioner had no fundamental legal or statutory rights in seeking compensation from the government.

The court rejected the arguments of the State and held that it was the duty of the State to provide safety and security in which the government failed. The right to life can be jeopardized by affecting the right to livelihood, the Supreme Court had observed in *Olga Tellis v. Bombay Municipal Corporation*,<sup>15</sup> that the court while entertaining an application for enforcement of a fundamental right must look at the substance and not form.

The High Court passing an order to pay compensation to the extent of loss suffered by the petitioner observed:

It cannot be denied that the maintenance of law and order is a duty of a responsible government who could not abdicate this function and allow the life and liberty of the citizen to jeopardy.

**The High Court further observed:**

As and when life and property ... is taken away by any individual or organisation, a duty is cast upon the state representing the will of the people to compensate the victim by granting adequate compensation. The monarchical rule is to be distinguished from democratic set up to protect the life, liberty and property of its citizens. On their failure to protect life, liberty and property to the citizen, State is under the constitutional obligation to compensate the victims adequately.

In *Bhajan Kaur v. Delhi Administration*<sup>16</sup>, a writ petition was filed in Delhi High Court for paying compensation to the dependents of those killed in the riots after the assassination of Smt. Indira Gandhi as the State had a duty to protect the life of its citizens.

The Delhi High Court held that the expanded meaning attribute to Article 21 of the Constitution, it is the duty of the State to create a climate where member of the society belonging to different faiths, caste and creed live together and therefore the State has a duty to protect their life, liberty, dignity and worth of an individual which should not be jeopardized or endangered. If in any circumstances the state is not able to do so, then it cannot escape the liability to pay compensation to the family of the persons killed during the riots. The High Court directed the State government to pay a sum of Rs. 2 Lakhs with interest and also gave a general direction that the order should apply to similar cases also.

A writ petition was filed with a view to extend the application of the order passed by the Delhi High Court in *Bhajan Kaur* case to entire country and to redress the victim in *S.S. Ahluwalia v. Union of*

<sup>15</sup> 1985 SCC (3) 545

<sup>16</sup> On July 1996



India.<sup>17</sup> The Supreme Court agreed in principle that the Government should pay compensation to the family member of the persons killed in riot but it found difficult to extend the decision of Delhi High Court in Bhajan Kaur case to all States without making a detailed examination of the circumstances arising in each case. The Supreme Court directed various High Courts to deal with the matter as if the writ petitions were filed before it and assess the loss suffered in individual cases.

However, the Chhattisgarh High Court in *Kehar Singh v. State of Chhattisgarh*<sup>18</sup>, extended the application of the direction issued by the Delhi High Court in Bhajan Kaur case and held that it is just and proper that a sum of Rs. 2 lakh as compensation be awarded from the date of the incident with interest 9% per month adjusting the amount already paid to the dependents. From the above discussion it is quite clear that the maintenance of law and order is the function of the State and the failure on part of State may result into invocation of violation of fundamental rights.

The state may be directed to pay compensation for violation of fundamental right to life. In communal violence also such a provision of public law may be invoked and the state may be asked to pay compensation to the riot victims for the loss of life and property. Although the Central government in case of urgency announces ex-gratia to victims of crime. In this guidelines issued from time to time as in central scheme for Assistance to Civilian Victims of Terrorist, Communal and Naxal Violence, 2009.

In *Hindustan Paper Corporation Ltd v. Anata Bhattachaya*<sup>19</sup>, the court restricted the public law remedy only to

Article 21 ignoring the Article 300A as being constitutional right stated:

Public law remedy for the purpose of grant of compensation can be restored to only when the fundamental right of a citizen under Article 21 of the constitution is violated and not otherwise. It is not every violation of the provisions of the constitution or a statutes, which would enable the court to direct grant of compensation. The power of court of judicial review to grant compensation in public law remedy is limited. Thus the traditional distinction between 'sovereign' and 'non-sovereign' function of the State has gradually eroded.

In *Destruction of Public and Private Properties v. State of A.P.*,<sup>20</sup> taking a serious note of various instances where there was large scale destruction of public and private properties in the name of agitations, bandhs and the like, the Supreme Court approved the that under the PDPP Act must be so amended as to incorporate a rebuttable presumption (after the prosecution established the two facets) that the accused is guilty of the offence and enabling the police officers to arrange videography of the activities damaging public property. In such cases (wherever a mass destruction to property take place) concerned High Court may suo moto action and set up a machinery to investigate the damage caused and to award compensation related thereto.

Section 250 of the Code of Criminal Procedure 1973 authorizes Magistrate to direct complainants or informants to pay compensation to people accused by them without reasonable cause. Section 357 enables the court imposing a sentence in criminal proceedings to grant compensation to the

<sup>17</sup> 16<sup>th</sup> March 2001

<sup>18</sup> 3<sup>rd</sup> August 1988

<sup>19</sup> 2004 (9) SCALE 46, (2004) 6 SCC 213

<sup>20</sup> 16<sup>th</sup> April 2009





victim and to order the payment of cost to the prosecution. Under Section 357A victim compensation is now made applicable by the Code of Criminal Procedure, 1973 and it does not require the apprehension and conviction of the offender to provide financial relief to the victims. The Scheme for providing compensation shall be prepared by State Governments- in coordination with Central Government.

In old Code of Criminal Procedure, 1898 contained a provision for restitution in the form of section 545. Now there is only one general law that govern the victims compensatory rights as mentioned in under Criminal Procedure Code, 1973 in Section 357. The Apex Court in Hari Kishan v. Sukhbir Singh high lighting the importance of Section 357(3) of the Criminal Procedure Code, 1973 says, Section 357 of Cr.P.C. 1973, is an important provision. This power to award compensation is not ancillary to other sentences but it is in addition thereto. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender.

The courts have seldom invoked it. Section 357 has been detailed in five sub sections under sub section (1) of the S. 357, compensation could be directed to be paid only if the accused is punished with a sentence of fine or with some other sentence of which fine formed part; and secondly, it could be directed to be paid out of the amount of fine recovered. Consequently the amount of compensation could be in no case exceed the amount of fine; and the quantum of fine would again depend upon the limit up to which the fine was award able for the particular offence and also upon the extent to which the court had power to impose fine.

Further, sub section(2) provides that where the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal. In sub section (3) says when a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person 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. According to sub section (3) compensation can be granted quite liberally and without any restriction.

The only limitation of subsection (3) is it would be awarded where sentence of fine is not imposed. If the sentence of fine is imposed, this section is not applicable. Under subsection (4) of 357 provides that an order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

Subsection (5) of section 357 provides that at the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section. The applicability of this section is when by court the offence under is successfully proved.

It settled through the case laws 30 that compensation for murder, in murder cases the court are of the view that true justice will be rendered only when proper compensation is provided to the dependents of the deceased.

The amount of compensation awarded range from Rs. 10,000 to Rs. 1,00,000 depending upon the number of



dependents' of the deceased and capacity of the accused to pay the same. Section 357 have own limitation While passing an order under Section 357(3), it is imperative for the courts to look at the ability and the capacity of the accused to pay the same amount as has been laid down by the cases above, otherwise the very purpose of granting an order of compensation would stand defeated. It occurred in many cases then it was realized to shift this duty of compensation to state also by creation of Victim Compensation Scheme.

#### **Victim Compensation Scheme:**

The universalistic views on criminal justice system emphasize on the norms collectively recognized and accepted by all of humanity. The internationally accepted norms where under an individual's criminal act(s) is accountable are universally binding and applicable across national borders on the premise that crimes committed are not just against individual victims but also against mankind as a whole. The crime against an individual thus transcends and is taken as an assault on humanity itself. It is the concept of the humanity at large as a victim which has essentially characterized 'crimes' on universally-accepted principles.

The acceptability of this principle was the genesis of Criminal Justice System with State dominance and jurisdiction to investigate and adjudicate the 'crime'. For long, the criminal law had been viewed on a dimensional plane wherein the Courts were required to adjudicate between the accused and the State. The 'victim' - the de facto sufferer of a crime had no participation in the adjudicatory process and was made to sit outside the Court as a mute spectator.

The ethos of criminal justice dispensation to prevent and punish 'crime'

would surreptitiously turn its back on the 'victim' of such crime whose cries went unnoticed for centuries in the long corridors of the conventional apparatus. Various international Declarations, domestic legislations and Courts across the world recognized the 'victim' and they voiced together for his right of representation, compensation and assistance. The Malimath Committee also affirm pro-victim movements.

The 154th Law Commission Report on the CrPC devoted an entire chapter to 'Victimology' in which the growing emphasis on victim's rights in criminal trials was discussed extensively as under:

Increasingly the attention of criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimization and protection of victims of crimes. Crimes often entail substantive harms to people and not merely symbolic harm to the social order. Consequently the needs and rights of victims of crime should receive priority attention in the total response to crime. One recognized method of protection of victims is compensation to victims of crime. The needs of victims and their family are extensive and varied.

#### **Further observed,**

The principles of victimology has foundations in Indian constitutional jurisprudence. The provision on Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) form the bulwark for a new social order in which social and economic justice would blossom in the national life of the country (Art. 38). Art. 41 mandates inter alia that the State shall make effective provisions for "securing the right to public assistance in cases of disablement and in other cases of undeserved want." So also Article 51-A makes it a fundamental duty



of every Indian citizen, inter alia 'to have compassion for living creatures' and to 'develop humanism'. If emphatically interpreted and imaginatively expanded these provisions can form the constitutional underpinnings for victimology.

In India the principles of compensation to crime victims need to be reviewed and expanded to cover all cases. The compensation should not be limited only to fines, penalties and forfeitures realized. The State should accept the principle of providing assistance to victims out of its own funds..."

In background of above efforts, The concept of 'Victim Compensation Scheme' has got birth by Section 357A which inter alia provides that "every State Government in co-ordination 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"<sup>35</sup>. Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation.

Section 357A(2) provides on recommendation of court for compensation the district legal service authority or the state legal service authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme provided for section 357A subsection (1). Section 357A (4) provides the rights to victim to proceed for compensation.

According to this subsection 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 service authority for award of compensation.

On getting the application by victim the authority will conduct an enquiry within two months regarding adequate compensation. Sub section 6 of 357A of the Code of Criminal Procedure explain the duty of the State Or District Legal Service Authority as the case be, to alleviate the suffering of victim, a 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 fits [Section 357A(6)].

(C) Delhi Victims Compensation Scheme, 2011. Government of National Capital Territory of Delhi approve the following Scheme for the purpose of providing compensation to the victims or their dependent(s) who have suffered loss 'Delhi Victims Compensation Scheme, 2011. Clause 3 of this scheme provides, Victims Compensation Fund, There shall be a Fund, namely, the Victim Compensation Fund from which the amount of compensation, as decided by the Delhi Legal Services Authority, shall be paid to the victims and their dependent(s) who have suffered loss or injury or require rehabilitation as a result of the crime or require rehabilitation.

Clause 4 details regarding Eligibility for Compensation.- The victim or his/her dependent(s) shall be eligible for the grant of compensation after satisfying the criteria Clause 5 says Procedure for grant of compensation.-

(i) Wherever, a recommendation is made by the court for compensation under sub-sections (2) and (3) of section 357A of the Code, or an application is made by any victim or his/her dependent(s), under sub-



section 4 of section 357A of the Code, 1973 to the Delhi Legal Services Authority, it shall examine the case and verify the contents of the claim with regard to the loss or injury or rehabilitation as a result of the crime and may also call for any other relevant information necessary for consideration of the claim from the concerned.

(ii) The inquiry as contemplated under sub-section(5) of section 357A of the Code, 1973 shall be completed expeditiously and the period in no case shall exceed beyond sixty days from the receipt of the claim/petition.

(iii) After consideration of the matter, the Delhi Legal Services Authority, upon its satisfaction, shall decide the quantum of compensation to be awarded to the victim or his/her dependent (s) on the basis of loss or injury or requirement for rehabilitation, medical expenses to be incurred on treatment and such incidental charges, such as funeral expenses etc. On basis of above scheme the High Court of Delhi has in State V. Jaihind, where the court direct that the state shall pay to the victim the sum of rs.3,00,000 as victim compensation in term of rule 3 and 5 read with entry 2 to the schedule to Delhi Victim Compensation Scheme ,2011 read with section 357A.

#### **INTERNATIONAL VICTIM RIGHTS:**

Victim rights has been acknowledged as a basic human right. In 1985, the U.N adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, <sup>21</sup> which outlines international best practices for treatment of crime victims. There port

recognizes an offender's obligation to make fair restitution to his or her victim, acknowledges that victims are entitled to fair treatment and access to the mechanism of justice, and generally draws attention to the need for victim rights in criminal justice process.<sup>22</sup> Other United Nations provisions that touch on victim's rights include, The International Covenant on Civil and Political Rights [ICCPR]; The Convention on The Elimination of Discrimination of Women [CEDAW]<sup>23</sup> and the convention on the Rights of Child [CRC]<sup>24</sup>. The ICCPR has been ratified by 172 nations, including U.S.A, Canada, Russia, and France. It includes the following provisions related to victim's rights.

Rights to be protected from harm, which imposes obligations on governments to have effective criminal justice systems [Article 6.1, Art.7, Art.17] Rights to be recognized by the treated equally before the laws [Article 2,3,16 and 26]

A right of non-discrimination [Article 2]

Rights to a remedy and to access to justice {Article 2 and 14}

Due process rights [Article 9,10,14 and 15]

In 2008, Human Rights Watch published an analysis comparing United States Victim's rights law to International Human Rights Standards. This report, titled "mixed results". U,S policy and International Standards on the Rights and Interests of crime", found that while U.S. jurisdictions, both federal and state, have made significant progress in recent decades, much more can be done to ensure that victim's rights and legitimate interests are upheld. The report states

<sup>21</sup> Declaration of basic principle of victims of crime abuse of power, UN.Org.

<sup>22</sup> National Crime Victim Law Institute Journal, Law.ICLARK.Edu.

<sup>23</sup> Convention on elimination of all forms of discrimination against women, UN.Org

<sup>24</sup> UNTC, TREATIES.UN.ORG



that the U.S should use the Un Basic principles as a guide to inform their laws and policies. In addition, it recommends that the U.S adopt policies that: 1.remove arbitrary limits on the definition of 'victim' in the state and federal laws; 2.expand access to victim services and compensation; and 3.maintainand enforce standards for the collection and preservation of evidence, particularly rape kit evidence.<sup>25</sup> The report also recommends U.S ratification of CEDAW and CRC.

**conclusion:**

The entire criminal legal system functions primarily and substantially to provide justice to the victim. Giving the victims and witnesses a voice to testify in court without fear, participate in the court proceedings and have their rights and interests protected is of utmost importance for the legitimacy of the justice delivery system. Moreover, the present day understanding of justice necessarily includes accessibility to courts of law. Unless the judicial system is accessible to the people who demand justice, the system would exist only in name and not in substance. Needless to say, victims and witnesses would be amenable to accessing the system and give truthful testimonies only if the system guaranteed a protection of their and their families' Privacy, security, identity and dignity.

Many a time the victims get ostracized and blamed for misfortune they face. It is easier for the people to blame a helpless and shattered victim rather to hate the criminal or the offender. It's the society's attitude towards victims of crime that the people usually blame the victim and don't have the empathy for them. The

criminal or the offender doesn't face such ostracization and he/she gets mingled in the society without any problem. Had the law been tough on the criminals and took care of the rights of victims of crime, the situation would have been much different. The whole criminal justice system is offender oriented. The legislature, the executive and even many times the judiciary are concerned with the rights of the accused or the criminal. Hence, a strong message regarding victims' rights is not forwarded to the people by them and therefore, the society does not feel the sympathy for the distressed victims.The court has visualized the awards of compensation as an important methodology not only to redress the violation but also as deterrent. The government needs to clear the concept of omission of government officials especially police.

The issues (like term victim, amount of compensation) that are gray area in the getting of compensation has been flagged should be appropriately solved by judiciary because the .problem of this nature should not be allowed to dampen the spirit of the compensatory jurisprudence. In order to better restitution of victims, the other states law requires to prepare a blue print of victim compensation like Delhi Victim Compensation Scheme.

These days are over where dominance of state had only liability to make a trial and punish the accused, victim should also consider as the part of criminal administration through the glasses of human rights. By this new version of criminal justice system emerge having component of universal humanism. Victim compensations is basic

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<sup>25</sup> Human Rights Watch 2008, ISBN 1-56432 – 373 - 0





human right which is also recognized in modern criminology. The recognition of the victim as a person with compensatory rights ,is a major break with the past.Whatever the pain and loss to the victim we cant erase from her life but there should be compensate by ecomonically as much as possible,this new approach is taken to our Indian Criminal Justice System.