



EVOLUTION OF VICTIM COMPENSATION LAW IN INDIA

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Abstract

Any person or an entity who has suffered harm or loss due to the violation of criminal law can be called as a victim. A person can be a victim even the accused is unidentified or unknown. Indian legal system gives more emphasis to the retributive theory of punishment there by punishing the accused became the prime motto of it. In this scenario, even the accused is punished, the fate of the victim is getting worse day by day. To fill this lacunae, various criminologists lead to the development of study of criminology in the victim perspective which paved a way to incorporate new legislations which are victim oriented than the accused. Though it all started after the end of World War II but it has rapidly evolved into an important branch of Criminology. There are many landmark judgements which clearly depicts the presence of victims perspective in delivering a Judgement and the importance of the concept of providing compensation and how it helps the victim, there by development of Victim Compensation Scheme. This research paper mainly deals about the importance of development of victim's perspective and its scientific approach in the criminology to render justice in the highest possible ways. It talks about the evolution and the importance of studying criminology in victim perspective in the bigger picture and the development of

various laws and the landmark judgements that changed the India.

Introduction

Victim compensation has been well accorded the status of the weeping beggar at the doors of the whole criminal justice administration. Despite the fact that the same is an archaic concept but much of logic and poignancy can be well attached to it, as the same tends to work in the veins of science and its development as a branch of criminology has at the similar instance added to its development and buttressed its foundation. It is imperative on our part to note the every fact that there have been several countries which have devised various modes of payment of compensation to the victims of the crime and much of credit is to be given to the various legislative measures as taken.

Considering the domestic paradigm it is imperative on our part to know that we also have in place a plethora of legislations to compensate the victims of the crime that being Fatal Accident Act, 1855, Probation of offenders Act, 1958 and last but never the least the Code of Criminal procedure, 1973. As we proceed further it is imperative on our part to consider the recommendations of the law commission¹. Considering a comprehensive provision as regards to the same, Section 357 of the code of criminal Procedure Code, attaching more brevity to the same it is 357(1)(3), the court may award the victim of the crime compensation only after the trial and conviction of the accused. It must be noted that these powers are not subsidiary to other sentences, but is in addition to the same² and the discretion is

¹ 41st Report, Law commission of India on Indian Penal Code(1860)

² Gaur, K.D, Criminal law and criminology 851, Eastern Book Company, Lucknow(2002)



readily vested with the courts and the basis of deciding the same is sorely dependent upon the facts and circumstances of the same. How-ever an inference can readily be drawn that the present regime of victim compensation is a sorry state of affairs as any compensation awarded under this section has a trial spanning for a period of 8-10 years and conclusion of the appellate round is a must³

The term casualty of wrongdoing and its importance has not characterized under any Indian law managing pay to the people in question. It was simply included 2008 through change of the Code of Criminal Procedure. The correction to the Criminal Procedure Code in 2008 gives the meaning of 'unfortunate casualty' under segment 2 condition "[as pursues:- "Victim" signifies an individual who has endured any misfortune or damage brought about by reason of the demonstration or exclusion for which the denounced individual has been charged and the articulation "injured individual" incorporates his or her watchman or lawful beneficiary."

The meaning of 'Injured individual' in the previously mentioned definition there are three critical fixings which are to be noted plainly:

- I. Reason of act or oversight because of which an individual has endured any misfortune.
- II. Denounced individual has been charged for his demonstration or oversight.
- III. Articulation injured individual incorporates himself or his or her watchman or any legitimate beneficiary.

A significant truth being that the preliminary courts have only from time to time utilized the power as presented upon it by the goodness of Section 357 of crpc and the real imprudence lies in the very actuality that the equivalent has not in the slightest degree been utilized in a liberal way and in spite of being in the rule book of the nation for such a long time the courts have not in any manner contemplated the equivalent. The law commission has moaned about the condition of illicit relationships as respects to the equivalent in the accompanying words:-

"We have a very comprehensive provision for payment of compensation to the injured party under Section 545 of the code of criminal procedure. It is regrettable that our courts do not exercise their statutory powers as are conferred upon them and the same has not been liberally exercised as falling short of the way it was desired to be done. The section has no doubt has its limitations. It's applications depends, in the first instance on whether the courts consider substantial fine as a proper punishment for the offence. In cases having severe gravity, the court may think that a heavy fine in addition to imprisonment for long term is not justified, especially when the Public prosecutor does not press upon the same"

Diving further it is basic on our part to take note of that the case, has been a proof of the supreme style of Krishna Iyer J. expressed that while social obligation of the criminal to re-establish the misfortune or recuperate the damage is a piece of the correctional exercise, the length of the term is no reparation to the deprived or the disabled however is mercilessness summed with sheer

³Mundrathi, S., Law on Compensation- To Victims of Crime and Abuse of Power 182, Deep and Deep

Publications, New Delhi, (2007)



worthlessness. Victimology must discover satisfaction said the court, not through barbarity but rather by necessary recoupment by the transgressor for the harm as caused. The case, coordinated the consideration of the considerable number of courts to practice the power as presented under Section 357 of the code in a liberal fashion.

The case⁴spawned the judicial observation that the award or refusal of compensation in a particular case may be the discretion of the court, there exists a mandatory duty to apply its mind to the very question in every case and the same is well substantiated by according well reasoned stance. It was in the year 2008, the code of criminal procedure was amended and Section 357 A⁵ was added in which there takes place the introduction of the very victim compensation scheme had been introduced, however it was in the case⁶ where he courts failed to accord any reasons behind not awarding any compensation to the victim and they were passing non speaking orders in the same. Also it is worth noting that in the year 2013 introduction of section 357B, 357 C have been inserted in the code of criminal procedure and 357B provides for those victims who have suffered from offences under 326-A and 376 D of the IPC

In addition to the same it is worth noting that the compensatory jurisprudence has also seen the light of the day in the sphere of the human rights philosophy as a dynamic interpretation and the same is read in the vein of Article 21 of the constitution of India. There exists a catena of judgments of supreme court as well as the High court which tend to deal with the

whole debacle as surrounding the victim compensation, but a new sphere is added to the same when it is read with Article 32 and 226 of the constitution of India

Referring to the case⁷it was observed by the court that:-

“The courts have an obligation to satisfy the social aspiration of the citizens and they have to apply the tool and grant compensation as damages in a public law proceeding seeking enforcement of fundamental rights and the same does grant compensation too by penalising the wrongdoer”

Referring to the very principle of ubi jus, ibi remedium and the same is the basic principle in the tort law which goes on to state that the wrongs must not remain unaddressed and the compensation tends to include an inseparable part of the whole thing. There are various dimensions as regard to the issue of payment of damages and compensation in the law as related to that of torts and the principles as relating to the payment of damages relating to measure of damages etc. However if we consider the present context the very connotation of it being amends for the loss sustained and its more a way to bridge the gap between the previous state of being and the present state of being⁸.It is a sign of responsibility of the society to make good the losses

The very term “Compensation” has to be made distinct from the term damages as they are quite dissimilar in nature and the same is used interms of relation to a wrongful acts that tends to cause an injury and now a great deal of credit is to be extended to the very compensatory jurisprudence that tends to

⁴Ankush Shivaji Gaikwad v. State of Maharashtra, Criminal Appeal no. 689 of 2013

⁵ The Criminal amendment Act, 2008

⁶ Guru Basavraj V Union of India

⁷ Rabindra Nath Ghoshal V University of Calcutta &ors. AIR 2002 SC 3560

⁸ State of Gujarat V Shantilal, AIR 1969 SC 634



extends the definition of victim and make it inclusive of the legal representatives of the accused also, it can be construed as “equivalent rendered” for the losses suffered. It is imperative on our part to delve further into theoretical construct of the same, as it is quite a well-known fact that the criminal justice administration would in India efficaciously and in order to render expeditious justice. As sated earlier regarding the 2008 criminal law amendments as were made and the same was done in order to strengthen the very criminal justice administration and buttress the foundation of its overall functioning.

Historical perspective

The very inquiry as to the origins and functioning of the same would remain totally incomplete and the same is to be done with sheer objectivity. The very concept if seen historically the same can be well traced back to the 12th and 13th century and a distinction was drawn between the types of the wrongs being that being the civil and criminal wrongs⁹. As taking into consideration the civil wrongs the same was readily confined to that of the individual self only and not the society as a whole and thus the perpetrator was necessitated to pay the amount. At the similar instance when the offence was committed against the whole society at large and thus the whole state was involved in the picture and the state wholeheartedly took the onus upon itself regarding the very treatment that is to be done with the perpetrator. There

have been instance where various justifications have been posed and brought into picture for the approach as used. And the same was well inclusive of benefit to the victims, symbolic social recognition, deterrent effect as regards the offender and at the same instance the paying of the compensation had an intrinsic moral impact over the very individual¹⁰

Much of poignancy can be well attached to the below mentioned text taken from the Hammurabi code¹¹ of the ancient text of Babylonian which goes as:-

“If a man has committed robbery and is caught the man shall be put to death. If the robber is not caught, the man who has been robbed of shall formally declare what he has lost....and the city shall replace whatever he has lost for him. If it is life of the owner that he has lost, the city mayor shall pay 1 maneh of silver to his kinfolk”

A similar rule had inside its circles a decent amount of authenticity and the equivalent had a lot of agreeableness in England and the Anglo-Saxon time of the seventh century. The Kentish laws of the Ethel-best contained explicit measure of remuneration for an expansive number of violations running from infidelity to kill. In the early custom-based law of Middle England, if a man was killed, the group of the injured individual was qualified for a wergild of four pounds

Over the time the criminal equity framework was isolated from that of the common

⁹ K.D. Gaur, Justice to Victims of Crime: A Human Rights Approach, in CRIMINAL JUSTICE: A HUMAN RIGHTS PERSPECTIVE OF THE CRIMINAL JUSTICE PROCESS IN INDIA 350, 351 (2004).

¹⁰ LAW COMMISSION OF INDIA, ONE HUNDRED AND FIFTY FOURTH REPORT ON

THE CODE OF CRIMINAL PROCEDURE, 1973 (1996), at 57.

¹¹ Marlene A. Young, Meeting Victim Needs: What is the Role of Victim Compensation in Recovery? THE NATIONAL CENTRE FOR VICTIMS OF CRIME (May, 2003)



framework and the well-suited reason that must be concurred was expected to the, each reality that the clerical forces and the imperial forces had been developing. It is to be noticed that the present criminal equity framework depends on the very assumption that the cases of unfortunate casualty are adequately fulfilled by the conviction of the culprit . The panel on the changes of the criminal equity organization depends on the proposals of Justice Malimath who considered rendering equity to that of the exploited people to the greatest objectives to the entire organization of the criminal equity framework. It is suggestive of an all encompassing equity framework for permitting investment in the criminal procedures and remuneration to the person in question.

In India there are in function 5 possible statutory provisions under which compensation shall may be awarded for the crime and they are namely:-

- 1) Fatal Accidents Act, 1855
- 2) Motor vehicles Act, 1988
- 3) Criminal Procedure Code, 1973
- 4) Probation of offenders Act, 1958

It was the year 2009 until which there was sheer absence on a comprehensive legislation or a well-designed statutory scheme that allowed the victim to seek compensation either rom the perpetrator or the state

PRE-AMENDMENT POSITION

Giving a careful glance at the code of criminal procedure, 1973 there surfaces a-highly fragmented legislative schemes for the purpose of compensating the victims¹². In pursuance of the recommendations of the 41st law commission report of 1969, a provision

was enacted in the statute under the name of Section 357 of crpc and the same states that “Court may award compensation to victims of crime at the time of passing the judgment, if the same is important in the interest of justice”, However a major folly of the aforesaid provision being that the said amount if compensation cannot exceed the amount of fine as imposed and there are four grounds which are to be considered:-

Defraying the financial misfortunes acquired by the individual in indictment, or by a true blue buyer of merchandise that being stolen products or for misfortune brought about by damage or passing. Be that as it may, Section 357(3) empowers to an equivalent degree the court to grant pay despite the fact that fine does not shape a piece of the sentence and the equivalent is left to the court and its prudence and there must be taken into the thought the realities and the conditions of the case.

It must be noticed that the standard basic Section 357 of the code is like that as conceived in the UN Basic Principles of equity for casualties of wrongdoing and in the meantime a significant truth must be taken into notice and that being that given the low rates of conviction one needs to address whether a viable injured individual pay plot exists or not and a panacea couldn't be come to due to the very reality that it was utilized in a grim manner

It is basic on our part to take note of the very reality that the meaning of unfortunate casualty has been given under Section 2(w) of the code of criminal system and the equivalent goes as:- Victim hints an individual who has endured any misfortune

¹²Sections 357, 421 & 431



or damage brought about by any reason of act or oversight for which the blamed is charged and the equivalent is well comprehensive of his/her wards"

An examination is should be done so as to have into spot a sound discourse and the equivalent will be contrasted and that of the United countries presentation of essential standards of equity and for casualties of wrongdoing and maltreatment of intensity :- Victim incorporates any individual who separately, aggregately, has endured hurt, including physical, mental damage, enthusiastic enduring , financial misfortune or generous loss of his major rights, through acts or exclusions that are infringing upon the criminal laws working inside the part states including laws accommodating criminal maltreatment of influence. The leitmotif of the very correlation being that there has occurred an extremely tight translation of "misfortune or damage" endured by the unfortunate casualty we trust that a far reaching importance having a more extensive understanding ought to be included the governing body and at a similar occurrence there more likely than not occurred unequivocal consideration of casualty of wrongdoing of maltreatment of influence and notwithstanding a similar it must be comprehensive of those individuals who have been harmed amid the mediation procedure and a similar example California, Massachusetts have the equivalent. The entire essence of the issue being that every one of these measures in totality help the police to check the wrongdoings and the equivalent will in general be very comprehensive in nature and in this way builds the dimension of investment.

Sec 545 - analysis of 1898 code

The victim compensation and the penal law has it traces from the British rule and colonised India. The very first trace of this provision can be found in the section 545 of CrPC, 1898 which gave the power to the court to order the whole or any part of the fine recovered from the accused can be awarded as the fine to the victim. According to this code if any loss was caused due to the theft, stolen property or criminal misappropriation then the victim was compensated, if the victim purchased the same with bona-fide intention. If any compensation which was awarded and if there is any appeal related to the same then no such payment shall be made and the same was discussed in the section 545(2) of 1898 code. Here the opinion of the court has major value and such recovery can be claimed in the civil courts as this provision was not so effective and courts are not using the provided power in liberal nature for compensating the victim. So the government of India introduced a new bill for change in the criminal procedure Code in 1970 after taking the report of 41st law commission into consideration where the section 545 was discussed thoroughly and introduced the section 357 in the latest code of 1973.

The main reason and object of introducing the 1970 bill was:-

According to the section 545 of the 1898 code if the court imposes the fine on the accused then only the victim was compensated and the compensation is limited to the amount of fine. So in the new provision the victim was compensated irrespective of the offence whether it was imposed with the fine or not. The accused was made liable to compensate the victim if there are any losses related to crime committed. It may be the physical injury or pecuniary damages the accused was made liable to pay the



compensation. So the section 357 of 1973 code was broader in perspective and there was an utmost need for the implementation the same to meet the ends of the justice. The main aim of this implementation is to provide the relief to the poorer sections of the community. The addition of clause 4 to the same court says that compensation may be awarded not only by the trial court but the same can be awarded by the appellate court, it may be the court of sessions or the high court or the supreme court when exercising its power of revision in order to meet the justice.

357= analysis of 1973 code

Under the Amended Indian law, 357(1) of the code of criminal procedure, 1973 tends to discuss the preparation of an apt scheme for possible compensation to victims or his dependents who have suffered loss and they are in need of rehabilitation. According to, Sub-Section 2 of the same whenever the court makes an order to pay compensation, the quantum of the same shall be decided by the DLSA, thus implying the District legal services authority or state legal services authority as per the requirements and needs of the case.

However it becomes a noteworthy fact that 357(3) of the Crpc the trial court has been empowered to make recommendations for compensation in cases where:-

- *Either the quantum that has been fixed turns out to be inadequate
- * Where the case entails acquittal and victim requires rehabilitation

Another beneficiary aspect can be traced from the provision of 357A(4) of the crpc according to which if the accused is not identified or known, the victim can still apply for compensation to the requisite authority as

readily stated above. It must be noted that in the UK there has taken place establishment of state funded victim compensation scheme, a major beneficial aspect of the same is that it readily takes into account all the difficulties of an overburdened criminal justice system. Section 357(5) of the same states that on receipt of an application under 357(4) of the code of criminal procedure, the period as necessitated upon it for awarding compensation shall be fixed at 2 months and the rationale behind the same is that it entails speedy trial and speedy disposal of justice and it readily connotes fairness as the provision goes on to state that the compensation as given must be fair and adequate enough

The establishment has been all around buttressed by 357(6) of the crpc which proceeds to express that so as to reduce the person in question and his/her anguish, the state or the locale lawful administrations specialist may arrange quick emergency treatment office or health advantages to be made accessible free of expense or some other interval help as esteemed fit by the proper expert and the sole goal of the area is focused on "mitigation of the misery". Notwithstanding equivalent to per the alteration Section 372 of the crpc proceeds to express that:- Provided that the unfortunate casualty will reserve an option to lean toward an intrigue any request gone by the court vindicating the denounced or indicting for a lesser offense, or forcing lacking remuneration, and such intrigue will mislead the court to which an intrigue commonly lies against the request of conviction of the court.

Constitutional remedies and the evolution of cases related to the victim compensation laws



The constitution is a ground-norm and bed rock for the justice system in India. Especially fundamental rights, particularly art 14 (Right to equality) and art 21 (Right to protection and personal liberty) and directive principles of state policy forms a major role in new social order for social and economic justice. Though DPSP are non-justiciable and un-enforceable they impose a duty on state to take constructive action for the welling being of citizens in the society. The fundamental duties under Art-51 A helps a lot in developing humanity among the people. These provisions would broadly construed which includes the rights of the victims.¹³

The significant phase of evolution of constitutional remedies to the victim starts from 1980 and 1990's by the supreme court giving special right to the victim to be compensated either by the private criminal or through the criminal administrative justice. The Mathura rape¹⁴ case was the lowest point in Indian judiciary through the weak laws and blatant decisions by the judiciary.

In the case of Rudul shah V. state of Bihar¹⁵ is considered as a new era in the victim compensation as the victim was compensated for infringement of Fundamental Rights for the first time in Indian History by Just. Chandrachud specially by invoking the extra ordinary powers of supreme Court under Article 32 of Indian constitution. In the Punjab V. Ajaib¹⁶ Singh case the court ordered the compensation of 5 lakhs even

after the accused was acquitted. In Bodhi SatwaGoutham case¹⁷ first time the concept of interim compensation was introduced as the victim should not be left unjust due to the delay in the process of delivering of the justice. The same principle was later added in the 2009 amendment.

In the Uttarakhand Stir Case¹⁸, the court has given a path breaking judgement by awarding a huge amount of compensation to the victims who were killed, raped and sexually molested and some were injured and illegally detained by the firing of police forces. In this case even the state was held vicariously liable for the things that were done by the police officers and it was also made liable for paying the compensation instead of protecting under the Doctrine of sovereignty through which generally the state was avoided from the criminal liability.

In D.K Basu v. State of West Bengal¹⁹ it was stated that the monetary fund doesn't completely relief the victim from the loss but it is the only effective relief for the family members of the deceased victim if he was the bread winner of the family. In the case of Chairman of Railway board V. Chandrima Das²⁰ where the victim was the national of Bangladeshi was raped many times by the railway officers was awarded the compensation of amount of 10 lakhs by the supreme court of India. The court held that even though she may be a foreigner eh was entitled for the right to life in India under article 21 of Indian Constitution.

¹³Anu sree A, Right to Compensation for Victims of Crime In India: Need For A Comprehensive Legislation In India 2 IJLDAI 45 (2016)

¹⁴Tukaram & Anr V. State Of Maharashtra (1978) Crim.L.J SC 1864

¹⁵ 1983 (4) SCC 141

¹⁶ 1995 (2) SCC 486

¹⁷Bodhisattwa Gautam v. SubraChakraborty, (1996) 1 S.C.C. 490.

¹⁸Uttarakhand Sangharsh Samitee v. State of U.P(1996) 1 U.P.L.B.E.C. 461

¹⁹ D.K. Basu v. State of West Bengal, (1997) 1 S.C.C. 416, 44

²⁰ (2000) 1 S.C.C. 465, 19.



These are some of the land mark cases related to the victim compensation evolution in India. The deep examination of the cases tells us that the power of awarding the compensation is wholly under the discretion of judges section 357(3) of CrPC has readily granted the quantum and under sec 357 A the judiciary has readily granted the powers for compensating the victim but it should be liberal in invoking the power under this provision and should work for the greatest benefit of victim.

In Maru ram and ors v. Union of India and ors²¹ just. Krishna Iyer stated that the victimology should find the need of compensation to the victim. The main perspective of some cases is to compensate the victim by providing the pecuniary losses that are caused to the victim which is the social responsibility of the accused but it is barbaric to order the long-term punishments to the accused. In many cases the sec 357 is considered as the salt in the flour and never taken seriously. So in the case of Hari kishan²² it was held that the courts should use their powers as liberally as they can, in order to provide the adequate compensation to the victim. In this case it was also explained meticulously the usage of section 357 and its importance in the victimology which directed the attention of all the courts. The court also held that section 357(3) has invoked seldom in it. The order of the court to give compensation is not ancillary in nature but it

is an addition thereto the other sentences which were awarded.

In ankushshivaji Gaikwad v. state of Maharashtra²³ it was held that the compensation its awarding and refusal depends upon the discretion of the court and there is a mandatory duty of the court to apply its brain according to the facts and circumstances of the case and the court should record its reasons for the same.

In 2008 Cr.P.C was amended and newly sec 357 A was introduced which deals with the victim compensation scheme. Once again in 2013 some additions are made to the sect 357. There inserted section 357 B which deals with the additional compensation to the victims of section 326 A and 376 D of Indian Penal Code which deals with the victims of acid attack and rape cases and Section 357 C which deals with the free medication and treatments to the victims of 326A and 376A ,376 B 376 D of Indian Penal Code and it is directed to all the hospitals irrespective of public or private sectors.

In Shantilal²⁴ and Smt. P.Ramadevi v. C.B Sai Bala Krishna²⁵ case it was clearly explained that compensation may be of any kind which actually recover the losses that are caused to the victim , the things that are equivalent to the same.

In Ratan Singh v. state of Punjab²⁶, it was highlighted aptly by Krishna Iyer that "It is a weakness of our jurisprudence that victims of crime and the distress of the dependents of the victim do not attract the

²¹(1981) 1 SCC 107

²²Hari Kishan and State of Haryana v. Sukhbir Singh, AIR 1988 SC 2127

²³Ankush Shivaji Gaikwad v. State of Maharashtra, Criminal -Appeal no. 689 of 2013 decided on 3rd May, 2013

²⁴State of Gujarat v. Shantilal AIR 1994 Kant 8 (12)

²⁵AIR 1994 Kant 8 (12)

²⁶1979 (4) SCC 719.



attention of law. In fact, the victim reparation is still the vanishing point of our criminal law. This is the deficiency in the system, which must be rectified by the legislation.”

Victim compensation scheme through states in india-2008 amendment to crpc-section 357 a .

The state funds are very much needed to compensate the victim adequately along with the private criminal and the central government. So through the 2008 amendment, section 357 A is inserted to the Criminal Procedure Code. As this depends on the state there will be a huge difference from state to state and we cannot expect the uniformity in the same. So they will differ in the minimum and maximum limit of compensation related to the same crime in different states. For instance the victim of rape the Kerala Government will give the maximum compensation of 3 lakh and in the Karnataka it is 1.5 lakh. This may cause the injustice among the victims as there will be the difference in the pecuniary compensation for the same criminal injury in 2 different states. In most of the cases the compensation provided by the state is inadequate to compensate the victim. So in the Suresh and other v. state of Haryana²⁷ it was held that the compensation ordered by the state of Kerala was on the higher side so all the other states should follow the same for compensating the rape victims. As there are many differences rising out of this issue it compelled the central government to enact Central Victim Compensation Fund, 2015 which contains twelve criminal injuries. If any injury does not fall in the same category then the state government will provide

compensation however there is no bar on the state government by the central government.

If the state government awarded any compensation under sec 357 A of Cr.P.C then the State Legal service authority or the District Legal Service Authority can decide the quantum, of compensation to be awarded. If the victim did not meet the needs through the compensation paid by the accused then the state can be made to pay by the order of the court, the case is same if it is related to the compensation is inadequate that is ordered by the trial court. If the court thinks that there is a need to order the immediate compensation in order to meet the end of justice then it can go for awarding the interim compensation if there is any delay in the final judgement. It should be order either by the magistrate or the police officer not below the rank of in-charge of police station. As any scheme made by the state can only cover the limited criminal injuries, alone with section 357A we can't meet the ends of justice so we need to use section 357 as far as possible as it covers the wide injuries.

In Baldev singh v. state of Karnataka²⁸ the judicial law making approached in the aspect of the victimology. The apex court ordered the compensation by invoking the provision of section 357(3) and held that ordering the compensation to be paid is more appropriate than giving the punishment to the accused. The court used its judicial power under this provision to benefit the victim by ordering the compensation instead of enhancing the compensation.

²⁷(2015)2 SCC 227.

²⁸(1995) 6 S.C.C. 593, 14



In *adamji Umar v. state of Bombay*²⁹ the apex court held that the judiciary should always mind the proportionality between the offence committed and the penalty awarded and it must be reasonable.

Conclusion

There is no statutory right in India that exclusively fight for victim compensation and the worst part is that there is no mechanism which work effectively to collect the ordered compensation from the accused and pay it to the victim unlike the western countries³⁰ it was believed in olden days that even though lost homage or honour may not come back but the victim can at-least feel the relief if the compensation is paid to the victim. State compensation provisions also pay a vital role in compensating the victim. As most of the victims and the offenders are poor, it is impossible to expect that the accused alone should compensate the victim and the situation will be far better if the state will take the active part by compensating the victim through consolidated state fund of the victim welfare fund. In most of the cases it will be helpful and assist the victim if have some financial support. There are certain provisions which will provide interim reliefs to the victims in cases which are related to the rape or acid attacks according to the new laws. The power of the courts to order compensation under the old law i.e., sec 545 of Criminal procedure Code, 1898 was limited and the main motto was to remove the unjust enrichment that was caused and to provide relief to the victim but the victim

compensation under section 357of Criminal procedure Code, 1973 is very wide and it has a social purpose to serve but its application by courts became a big hurdle. The law commission of India observed the fact that they are not only liberal in administering the powers under this section but is also admitted that the courts cannot use the powers under this section as liberally as they desired.³¹ After 2009 Amendment of Criminal Procedure Code is holistic but it depends on the discretion of the judges and the court. So, judges should ultimately use this provision for the best of their knowledge and at any cost their discretionary powers should not be the vanishing point of the victim compensation laws.

²⁹*Adamji Umar v. State of Bombay*, A.I.R. 1952 S.C. 14. This was also held in *Palaniappa Gounder v. State of Tamil Nadu*, A.I.R. 1978 S.C. 1525. The court reduced the fine of Rs. 20,000 imposed by the High Court on the accused, who has been sentenced to life imprisonment for committing murder, to a meagre

sum of Rs. 3,000. This was once again reiterated by the Supreme Court in *Swaran Singh & Anr. v. State of Punjab*, (2000) 5 S.C.C. 668

³⁰ The criminal Injuries Compensation Act, 1995

³¹ The 41st Law commission Report on The Code Of Criminal Procedure ,1898 (1969) at 356