



## VICTIM COMPENSATION IN INDIA: NEED FOR A COMPREHENSIVE LEGISLATION

By Avnip Sharma

From Bharati Vidyapeeth New Law College,  
Pune

### **INTRODUCTION:**

*“Law should not sit limply, while those who defy it to go free and those who seek its protection lose hope”<sup>1</sup>*

The foremost duty of the criminal justice system in any country is to safeguard the rights of the individual and the state against premeditated infringement of the basic norms of the society by deceitful persons. This duty is sought to be thru by ensuring that the accused is penalized in accordance with the law, in the process of which every measure is to be taken to ensure that the rights of the accused are safeguarded. However, it is repulsive to note that the system does not give much similar apprehension for the victims of crime, who are the “bye products of the crime”. The carriage of justice is often misjudged to halt at the signature on a judgment; however, the true destination lies at the lap of the victim. While it is the courts that preserve the sanctity of justice, it is the paramount obligation of the state to safeguard the rights and people of the state to support the pillars of the Justice. Victimology correlated jurisprudence has been contested extensively on where to place the ball of accountability – Question arises, does the responsibility of state ends simply by registering the case of the victim, conducting

the requisite investigation, commencing the prosecution and sentencing an accused or whether apart from these requisite steps, the state has a furthermore accountability towards the victim. In any criminal case, the victim is considered only as an informer for the substantial source of evidence and in most cases, as an Informant, the victim sets the criminal proceeding in wave by reporting the crime to the police. But thereafter he has no further role to play unless the police consider it necessary. Similarly, there is quandary whether there lays a duty towards the court to provide compensation to the victim irrespective of the conviction of the accused. Nonetheless, it remains that victims of a crime, including her/his kith and kin, carry an authentic expectancy about whether the State will ‘catch and punish’ the guilty and compensate the aggrieved. Even in the unfortunate event of falling of the justice machinery to ascertain the accused or be deficient in assembling and presenting requisite evidence to ensure suitable sentencing of the guilty, still, the duty remains to compensate the victim. The framework of justice in India has been largely unconscious as to what would institute true evidence to the victim. The sphere of justice has been hooked to merely provide for the conviction of the accused. This has exempted complete failures in terms of the blemished investigation, pitiable efforts of the prosecution, and the dubious integrity of those who are involved in the process. Furthermore, there has also been a lack of infrastructure to support or accommodate the development in the process. This drawback turn distress the eminence of justice offered to the victim. Justice must be reformative for

<sup>1</sup> Jennison v Baker, (1972) 1 All ER 997; Justice V.S. Malimath, Report of the Committee on Reforms of Criminal Justice System, Government of India,

Ministry of Home Affairs,(2003), [https://mha.gov.in/sites/default/files/criminal\\_justice\\_system.pdf](https://mha.gov.in/sites/default/files/criminal_justice_system.pdf)



the wrongdoer and restorative for the survivor. Thus, there is a valid expectation of the victim that he/she must be given restorative support together with monetary compensation.

Such compensation has been bound to be paid in public law remedy with reference to Article 21<sup>2</sup>. The jurisprudence under Article 21 has grown drive since the turn of the century and now extends to rehabilitating the victim or her/his family. The Hon'ble Supreme Court has in several cases, done justice to the victims, through the directed payment of monetary compensation as well as a restorative settlement where State or other authorities failed to safeguard the life, dignity, and liberty of victims<sup>3</sup>. Though the scope for the remedy to the victim in terms of restorative purpose was inadequate before public law by way of writ jurisdiction. Therefore it was of the utmost importance to introduce a specific provision that shall be focused on providing restorative measures to the victims irrespective of the result of criminal prosecution. As a result, section 357-A was introduced in the Code of Criminal Procedure, 1973<sup>4</sup>

### **1. History and Development of Compensation as Criminal Remedy**

Restitution has been working as a compensatory measure throughout the

history of criminal jurisprudence. Ancient societies never visionary separated the realm of criminal and civil law, but reflexively desired the offender to reimburse the victim and/or the family for the loss if any, originated by the commission of the offense. However, the primary purpose of restitution was misdirected since it was established to safeguard the offender from ferocious retaliation by the community or the victim as opposed to compensating the victim. It was an instrument used by the offender to revert the destruction or disturbance in peace that has been intruded by the offenders' action<sup>5</sup>

*In earlier common law the word "restitution" was used to denote the return or restitution of a particular thing or condition. The scope in contemporary legal usage has also been expanded to include not only the restitution or return of something to the rightful owner and the return to the status quo, but also compensation, recovery, compensation or reparation for gains gained from, or for loss or damage caused to, another.*<sup>6</sup>

Over time, principles of law gradually demarcated the allocation of punishment in the case of civil tort and criminal offenses. Compensation was then amalgamated as the victims' right in civil cases as contrasting to a remedy in a criminal case, although there was merely a remedy provided to the victim, rather than imprisoning the offender. Thus, criminal law was purged of the burden of

<sup>2</sup> The Constitution of India, 1950, <https://www.india.gov.in/my-government/constitution-india/constitutionindia-full-text>.

<sup>3</sup> KewalPati v State of U.P (1995) 3 SCC 600; Supreme Court Legal Aid Committee v State of Bihar (1991) 3 SCC 482; Railway Board v Chandrima Das (2000) 2 SCC 465; Nilabati Behera v State of Orissa (1993) 2 SCC 746; Khatri (1) v State of Bihar (1981) 1 SCC 623

<sup>4</sup> Code of Criminal Procedure Act, 1973 [hereinafter "CrPC"]

<sup>5</sup> Dilip S. Dahanukar v Kotak Mahindra Co. Ltd. and Anr. (2007) 6 SCC 528; Victim Restitution in Criminal Law Process: A Procedural Analysis, (1984) 97 Harvard Law Review, p. 931 – 946

<sup>6</sup> Bourdeau, John. "1". *Restitution and Implied Contracts*. *Am. Jur. 2d*. 66



compensation to rehabilitate victims since where the law stood from there the criminal justice was either to reform or retribute the criminal offender, as opposed to being regenerative with regards to the victim. This Orthodox position of the law has been undergone numerous changes, as the societies over the world felt an increasing need for the awareness and preferences for the victims' rights that have been ignored by the legislatures and the courts regarding criminal cases.

However, a program based on restitution provided by the offender to the victim is, for the most part, problematic as it is imperative for the wrongdoer to be detained and convicted, thus on another angle, the victim needs to afford the resources for the same. Such a scheme also gives rise to a possibility where the victim is denied compensation since the offender is a debtor and cannot raise money in prison<sup>7</sup>

Thus due to this challenging situation, the most appropriate solutions seem to be to have a state fund from which the victims are instantaneously compensated after the crime. If and when the offender is convicted, he may be ordered by the court to retribute a certain amount to the State<sup>8</sup>This principle is adopted to ensure that victim compensation is not at a standstill either due to the offender's inability to pay, an acquittal because of lack of evidence or due to the long judicial process.

Therefore, this legislation has been implemented by several states including Canada, Australia, England, New Zealand, Northern Ireland, and the USA providing for restitution by courts governing criminal justice.

## **2. History and Development of Victim Compensation in India**

The history of Indian penal law can be traced to the times of colonization and the era of British rule. Though it can be believed that ancient Indian History is a witness to the fact that the victims of crimes have sufficient provisions of restitution by way of compensation to injuries.

*“It is, however, remarkable that in as much as it was concerned to be the duty of the King to protect the property of his people 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 treasury, and in his turn, he could recover the same from the village officers who because of their negligence, were accountable for the thief's escape”<sup>9</sup>*

In the ancient Hindu law, during the Sutra period, the awarding of compensation was treated as a royal right. The law of Manu clearly stated the offender to pay compensation and pay the expenses of a cure for the victim in the case of injuries to the sufferer.

<sup>7</sup> M. Novak, Crime Victim Compensation – The New York Solution, (1971) [https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1224&context=cl\\_pubs](https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1224&context=cl_pubs)

<sup>8</sup> *Fresneda v State* (1977) 347 So.2d 102; *People v Becker* (1957) 349 Mich. 476; *State v Elits* (1980) 94 Wash.2d 489

<sup>9</sup> Law relating to Victim Compensation, <https://indianlawwatch.com/practice/law-relating-to-victim-compensation/>



The very first trace of restitution in Indian legal system can be originated in sub-clause (1)(b) of Section 545 in the Code of Criminal Procedure of 1898, which provided that courts may direct:

*“payment to any person of compensation for any loss or injury caused by the offense, when substantial compensation is, in the opinion of the court, recoverable by such person in a civil court”.*

### **3. The Law Commission Report and Section 357 of the CrPC**

Now accepting that there is no uniformity in the legal system in the country to address the issue of compensation to the victims of crime, it is expedient to discuss the legal position in respect of compensation to the victims of the offense. Post-independence, criminal proceedings were governed by the Code of Criminal Procedure 1898 and then Code of 1973 ("Cr. PC").

Until 2008 there was a more or less identical clause in both the crime victims' insurance codes which is section 545 of the old code and section 357 of the new code. The 41st Report of the Law Commission of India was submitted in 1969. This discussed Section 545 of the Code of Criminal Procedure of 1898 extensively. The report specified that the importance of the recoverability of compensation should be enforceable in a civil court parallel to the public remedy available to tort. However, the Law Commission questioned the demarcation since the discretion to apply the provision in cases was used scarcely by the courts in directing compensation for victims.

Based on the recommendations made in the above report by the Law Commission, the Government of India introduced the Code of

Criminal Procedure Bill, 1970, which aimed to revise Section 545 and reintroduce it in the form of Section 357 as it reads today. The Statement of Objects and Reasons underlying the Bill was as follows:

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

Henceforth the compensation sum in on no account can outstrip the fine amount. Moreover, the quantum of fine would depend upon the limit to which the fine can be imposed for that particular offense and also upon the extent to which the court is empowered to impose the same. The CrPC subsequently incorporated the changes proposed in the said Bill of 1970. In the Statement of Object and Reasons, it was stated that Section 357 was *“intended to provide relief to the poorer sections of the community”* whereas, the amended CrPC authorized the court to edict payment of compensation by the indicted to the victims of misconducts *“to a larger extent”* than was formerly allowable under the Code.

Section 357 brought about significant changes in the framework. Further to new



sub-sections were inserted Sub-section (3) and Sub-section (4). Sec 357 (3) is more liberal and it provides that compensation can only be awarded when the court imposes a sentence in which fine is not a part of the conviction sentence.

But it would appear that the liberal clause of Sec 357 Subsection (3) only applies if the fine sentence is not enforced. If the penalty is levied the compensation can only be paid out of the penalty sum.<sup>10</sup> While subsection (4) outlined the jurisdiction and powers of courts concerning the section. It states that an order granting compensation may be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

- **Other Provisions in the CrPC**

While studying the law of victim compensation, it is very vital to also discourse other aspects of what would be interpreted as compensation to aggrieved. This requires the perusal of the other sections of the CrPC such as section 358, section 372. Section 358 addresses a substitute interpretation of who is a 'victim' and what would be established 'compensation' for that purpose. In the context of strictly defining a victim, the Supreme Court has observed that

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*"The term 'Victimization' is defined neither by the Central Act nor by the Bombay Act. Therefore, the term 'Victimization' has to be given a general dictionary meaning. In Concise Oxford Dictionary, 7th Edn., the term 'Victimization' is defined at Page 1197 as follows: make a victim; cheat; make suffer*

*by dismissal or other exceptional treatment."*<sup>11</sup>

Section 358 says that there shall be compensation provided to anyone who has been a victim of an arrest that is finalized without reason. Section 358 states that in such a case, the Magistrate may award compensation to the victim to the extent of ₹1,000/- who has been arrested wrongfully without the reason. However, according to this section, it is obligatory for a direct connection to existing between the arrest and the complainant. In order to a case to fall under this provision, the arrest must have been accomplished by the informant without reasonable grounds.

Similarly, section 359 of CrPC says that whenever any complaint of a non-cognizable offense is made to a Court and the court then convicts the accused. Then It provides that a Court of Session, an Appellate Court, or the High Court while exercising their revisional jurisdiction can order payment of costs in such situations. While in addition to the penalty imposed upon him, the court may also order the accused to pay to the complainant, in whole or in part, regarding the cost incurred by him in a judicial proceeding, and in furtherance, the court may also order that in the event of default of payment, the accused shall be sent to simple imprisonment for a term not exceeding thirty days, and these costs may also include any costs incurred in respect of evidence and pleaders' fees which the court may find appropriate.

<sup>10</sup> Sarwan Sing v State of Punjab (1957) AIR 637, 1957( SCR 953)

<sup>11</sup> Colour-Chem Limited vs A.L. Alaspurkar & Ors on 5 February 1998



Further Section 237 similarly has been provisioned towards providing compensation to the victims. The CrPC also takes into account occurrences where the accused may be a victim to false allegations. In light of the same, Sections 237 deals with compensation to such unusual victims. Section 237 empowers the Court of Session to take cognizance of an offence under section 199 (2) of the CrPC. Further under the sub-section 3 of section 237 –

*“If in any other case, the court discharges or acquits all or any of the accused and finds that there has been no fair basis for charging them or any of them, by its order of discharge or acquittal, it may direct the person against whom the offense was alleged to have been committed (other than the President, the Vice-President of the Governor of a State or the Administrator of a Union Territory) to explain why he should not pay compensation to that accused or to any of those accused when there are more than one of them”.*

If the court is beyond reasonable doubt and considers that there is a lack of reasonable ground for the allegation imposed upon the accused, it is empowered to the court that the complainant to pay compensation of an amount not exceeding ₹1,000/- to the victim of false accusation, after recording the reasons for awarding the compensation.

#### **4. Victim Compensation and Interplay with Fundamental Rights**

The 154th Law Commission Report on the Code of Criminal Procedure<sup>12</sup> devoted an entire chapter to “Victimology” in which the

growing emphasis on victim's rights in criminal trials was discussed extensively. It was observed that the interest of criminologists, penologists, and reformers of the criminal justice system had progressively been directed towards victimology, to gain control over victimization, and the protection towards the various victims of crimes. It highlighted that crimes often entailed substantive harm to people, and this harm was graver than just the representation of its apparent effects in the social order. Consequently, it was also observed in the report the needs and rights of victims and that they should be prioritized in the hierarchy of the process of justice in dissecting a crime. Compensation to the victims was proposed as a recognized method of protection that offered immediate support to the victim. Such compensation could also be extended towards the family member of the victim or the loss incurred in the act of the accused in certain instances.

The principle of payment of compensation to the victim of the crime was evolved by the Hon'ble Supreme Court on the ground that the welfare state has to protect the fundamental rights of the citizens not only against the action of the social agencies but it is also responsible for hardships on the victim. It has been stated on the ground of obligation of social welfare, duty to protect its subject, etc. It should be remembered that the State's reimbursement for its official conduct was established by the Hon'ble Court against the doctrine of English law: "King can do no wrong" and it was specifically mentioned in the case of-

<sup>12</sup> 154th Law Commission Report (1996), <http://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf>



**Nilabati Bhera v. the State of Orissa:** In this case, it was clearly stated that the doctrine of sovereign immunity shall be only applicable in the case of a tortuous act of government servant and not where there is an actual violation of fundamental rights and hence it is stated that in criminal cases where there is a violation of the fundamental right this doctrine will not be applicable<sup>13</sup>

Further according to the 154<sup>th</sup> Law Commission report it was sketched out in the report the foundation of principles of victimology of Indian Constitutional Jurisprudence. Part III of the Indian Constitution which consists of fundamental rights and Part IV which deals with the Directive Principles of State Policy, form a defensive wall for “a new social order where social and economic justice would flourish in the national life of the country”<sup>14</sup>. It also mandates, inter alia, that the State makes effective provisions to 'ensure the right to public assistance in cases of disability and other cases of undeserved need’.<sup>15</sup>

Similarly, it has been observed, Article 51-A makes it a fundamental duty of every Indian Citizen, inter alia “to have compassion for living creatures’ and to ‘develop humanism’”. The Law Commission interrupts to assert that if the jurisprudence of these Articles is ‘emphatically interpreted’ and ‘imaginatively expanded’ they can form the constitutional underpinnings for victimology. The law commission also regretfully noted that the scope for victim compensation awarded in

Indian criminal law is rudimentary. However, Section 357 of the CrPC is the point of reclamation of Indian law, since it unites victim supportive jurisprudence by the modern of empowering courts.

### **5. Malimath Committee Report Finding**

To evaluate the mechanism of criminal justice in India, in 2003, the Committee on Reforms of Criminal Justice System was constituted under the Chairmanship of Justice V.S. Malimath. The Malimath Committee Report made observations regarding the history of the criminal justice system and how it was apparent that it mostly protected the ‘power, the privilege and the values of the elite sections in society’. It evaluated the way crimes are defined in the modern era. The administration of the system demonstrated that there is an ingredient of the truth of such a narrow perception.<sup>16</sup>

The principal postulation in the functionality of a criminal justice system is that it is the prerogative and principal function of the state to protect all the citizens from impairment to their person and property. The state is believed to symbolize this by “*depriving individuals of the power to take law into their own hands and using its power to satisfy the sense of revenge through appropriate sanctions*”

The Malimath Committee report argued that the state becomes a victim itself when a

<sup>13</sup> Smt Nilabati Behera Alias Lalita Behera V State Of Orissa And Others, Air 1993 Sc 1960 <https://Lawbriefs.In/Smt-Nilabati-Behera-Alias-Lalita-Behera-V-State-Of-Orissa-And-Others1993-There-Is-A-Great-Responsibility-On-The-Police-Or-Prison-Authorities-To-Ensure-That-The-Citizen-In-Its-Custody-Is-Not-Deprive/>

<sup>14</sup> Art.38, Constitution

<sup>15</sup> Art. 41, Constitution

<sup>16</sup> 6.7.1, Committee On Reforms Of Criminal Justice System Government Of India, Ministry Of Home Affairs



citizen commits a crime and as a consequence destabilizes its authority and breaches norms of society. It is this victimization that shifted the focus of attention from the actual victim of the crime, one who suffered the injury but to the accused and how he is to be handled by the state and the state provision.

Concerning the criminal, the Report noted that criminal justice has matured to comprehend the intricacies of the vehicle of crime: Criminal justice came to comprehend all about crime, the criminal, the way he is dealt with, the process of proving his guilt and the ultimate punishment was given to him. The civil law was supposed to take care of the monetary and other losses suffered by the victim. Victims were ostracized and the State stood forth as the victim to indict and penalize the indicted. Since victims were ostracized and defenseless, the State stood forth in the shoes of the victim to impeach and chastise the perpetrator.

Concerning the rights of the victim, the Report contemplated -  
*"6.7.2., "What happens to the victim's right to bring justice to the damage he has suffered? Well, if the State successfully gets the criminal punished to death, a jail sentence or a fine, he can be satisfied. Where will he seek redress if the State refuses to do so? Could he seek compensation from the State for the injury? In such a situation, that should, in principle, be the logical consequence; but the State which makes the law absolves itself".*

The principle of compensating victims has been ignored and more often it has been

recognized as a token relief than as a primary punishment to the offender, or a substantial remedy to the victim offered by law. It is also stated, the right to participate as the dominant stakeholder in criminal proceedings was taken away from the victim. The victim has no right to lead evidence, he cannot challenge the evidence through cross-examination of witnesses nor can he advance arguments to influence decision-making. However, provisions in the procedural law of crime in India provides for a sentence of fine imposed both as a sole punishment and as an additional punishment according to the wisdom of the court.<sup>17</sup> However, this provision is only invited when the perpetrator is convicted of the charges he is accused of.

In 2008, substantial amendments were made to the CrPC that focused on the rights of victims in criminal trials, particularly relating to sexual offenses, circumstances of when there is no identification of the accused but there has been an actual injury to the victim then also victim's can retrieve compensation. Although the amendments left Section 357 unaffected, they introduced Section 357-A<sup>18</sup> which authorizes the court to order the State to pay compensation to the victim in cases where 'the compensation provided under Section 357 is not sufficient for such rehabilitation, or where the cases result in acquittal or discharge and the victim has to be rehabilitated'<sup>19</sup>.

Section 357A subtly recognizes compensation as one of the prominent methods to protect the interest of victims. These provisions were amalgamated on the recommendation of the 154th Report of the

<sup>17</sup> Sec. 357, Code of Criminal Procedure, 1973

<sup>18</sup> Inserted by Code of Criminal Procedure Amendment Act (2008)

<sup>19</sup> Sec. 357A, Code of Criminal Procedure Act (1973)



Law Commission. The focus of the provision is on the rehabilitation of the victim even if the accused is not tried. In such instances, the victim is required to make an application to the State or District Legal Service Authorities as the case may be, for. The jurisprudence of this provision and the obligation of courts have been defined by the Hon'ble Supreme Court:

*"While awarding or refusing compensation under Section 357 of the Code of Criminal Procedure may be within the discretion of the court in a particular case, there is a compulsory duty on the court to apply its judgment to the issue in each criminal case. Application of mind to the question is best disclosed by recording reasons for compensation award/refusal."*<sup>20</sup>

#### **6. Criminal procedure code Amendment Act, 2008**

As per the Criminal procedure code Amendment Act, 2008, Section 357 A was inserted that was specifically concentrated on the recognition of the victim's right to compensation. The said provision stipulates that<sup>21</sup>

*"357-A. Victim compensation scheme.-*

(1) Each State Government shall, in coordination with the Central Government, prepare a scheme for the provision of funds for compensation purposes to the victim or his dependents who have agonized harm or injury as a consequence of the delinquency and who necessitate rehabilitation.

(2) Where a recommendation for compensation is made by the Court, the District Legal Service Authority or the State Legal Service Authority, as the case may be,

shall decide on the amount of compensation to be awarded under the scheme referred to in sub-section (1).

(3) Unless, after the trial, the trial court is satisfied that the compensation provided under Section 357 is not sufficient for such rehabilitation, or whether the cases result in acquittal or discharge and the victim has to be rehabilitated, a request for compensation can be made.

(4) Where the offender is not traced or identified, but the victim is identified, and where there is no trial, the victim or his dependents may apply for a compensation award to the State or District Legal Services Authority.

(5) The State or the District Legal Service Authority shall, upon receipt of such advice or application under subsection (4), award appropriate reimbursement by completing the inquiry within two months after the due inquiry.

(6) The State or the District Legal Services Authority, as the case may be, "To discharge the agony of the victim, it might order instantaneous first aid services or curative benefits to be made available free of charge on the police officer's certificate not below the rank of the police station or Magistrate of the area concerned, or on any other temporary relief as the appropriate authority deems necessary".

The code of criminal procedure (Amendment) Act, 2008, has made a remarkable contribution in filling the gaps in the law as far as the victim's rights are concerned. Apart from providing for various protection schemes for victim/witness protection especially in rape cases, the Act

<sup>20</sup> AnkushShivajiGaikwad v State of Maharashtra (2013) 6 SCC 770

<sup>21</sup> Inserted by Code of Criminal Procedure Amendment Act (2008)



also provides for a, to counsel for the victim, right to appeal against adverse order passed by the trial court and also incorporated Section 357 A which provided for a victim compensation scheme.

### 7. **Role Of Government**

The theory of State responsibility pins the blame of crime on the State as having failed to protect the public against crime. It propounds that compensation is, therefore, a consequence of such failure<sup>22</sup> Although modern jurisprudence accounts for individual deviance as being no fault of the State<sup>23</sup>, it supports the factum that the State must assist the vulnerable as a matter of public policy<sup>24</sup>. The Central Government has approved measures to realize the accessibility of compensation to the victims. The Criminal Law (Amendment) Act, 2013 was enacted on 2nd April 2013 to address the inadequacy in the law relating to sexual offenses regarding women and children. It led to the creation of a dedicated fund known as the Nirbhaya Fund. According to the guidelines released on 25 March 2015, the Ministry of Women and Child Development is the nodal ministry to evaluate and recommend the proposed schemes under the Nirbhaya Fund, it also reviews and tracks the progress of approved schemes in coordination with the ministries/departments in question. The central government also set up the Central Victim Compensation Fund Scheme

[hereinafter: CVCF] vide the notification dated 14th October 2015 by the Ministry of Home Affairs <sup>25</sup>. The Central Victim Compensation Fund Scheme aims at supporting and supplementing existing victim compensation schemes notified by states and union territories and decreasing the disparity in the quantum of compensation notified thereof. It defines the scope for budgetary allocation and provides for accounting and audit. It also opens public participation by inviting funding.

The Ministry of Women & Child Development has also launched the 'One Stop Centres' [hereinafter: OSC] Scheme, to be piloted with one Centre in each state. The objective of the OSCs is to provide an integrated range of services including medical care, legal and psychological support under one roof to women and girls who face violence. The Scheme also envisages that a lawyer and police facilitation officer associated with the OSC will support the woman during the recording of her statement under Section 164 (5A) of the CrPC.

All states and union territories have notified victim compensation schemes<sup>26</sup>. However, the schemes in each state operate differently. For instance, the Mizoram (Victim of Crime Compensation) Scheme, 2011<sup>27</sup> states compensation would be given to the victim and his/ her dependents in the event of loss of

<sup>22</sup> A. Goldberg, Equality and Government Action, (1964), 39 NYU L REV p.205-224

<sup>23</sup> J. Culhane, California Enacts Legislation to Aid Victims of Criminal Violence, (1965), 18 STAN L REV, p.266- 272

<sup>24</sup> B. Jacob, Reparation or Restitution by the Criminal Offender to his Victim: Applicability of an Ancient Concept in the Modern Correctional Process, (1970) , 61 The Journal of Criminal Law, Criminology, and Police Science p.152-167

<sup>25</sup> Central Victim Compensation Scheme Guidelines, Ministry of Home Affairs, 2015 [https://mha.gov.in/sites/default/files/CVCF\\_revised\\_27072017\\_0.PDF](https://mha.gov.in/sites/default/files/CVCF_revised_27072017_0.PDF)

<sup>26</sup> Index of Notification of Victim Compensation Scheme, Ministry of Home Affairs, 2013 [https://mha.gov.in/sites/default/files/CVCFDated06Sep2016\\_1.PDF](https://mha.gov.in/sites/default/files/CVCFDated06Sep2016_1.PDF)

<sup>27</sup> Gazette of Mizoram (Dec. 5, 2011)



property worth more than ₹1,00,000/- and in the event of death or permanent incapacitation of the victim who was the sole breadwinner of the family through the act of crime, whereas the Himachal Pradesh (Victim of Crime) Compensation Scheme, 2012<sup>28</sup> provides for certain cases, where the compensation shall not be paid at all.

The method of disbursing compensation proposed in each state scheme is also very different. According to the Karnataka Victim Compensation Scheme<sup>29</sup>, the compensation amount should be paid through cheque, while the Himachal Pradesh Scheme delivers that the compensation amount awarded should be made to the bank account of the applicant. Further, there is no consistency in the category of offenses for which the compensation is approved. In light of such disproportion, it is important to echo the perception of the Supreme Court observing the need for uniformity in the manner of awarding compensation under the Victim Compensation Scheme<sup>30</sup>.

### 8. Indian position

In India, as we follow our hoary system of the trial, wherein the state and the accused competes to get the court decision in their bowl, Hence victims' right gets itself plunge in the public interest in prosecution and conviction of the offender. Fair trial rights of the accused are given the prevalence in the Criminal justice administration in the country and hence the victims do not get their due attention regarding their injury and their position. This state was emphasized even by the Supreme Court in "**Rattan Singh v. The**

**State of Punjab**<sup>31</sup> wherein it was observed 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 attention of the law. Reparation for the victim remains the vanishing point of our criminal law. This is the system weakness, which the legislature must rectify"*.

As far as the victim's participation goes into criminal justice proceedings, his role is limited to that of an informant. Though investigating a case is the sole prerogative of police the role of the victim is always decided by the police and thereof in the process of information extraction from the victim, the victim of the case is merely harassed. Similarly, the victim also does not have any say if the magistrate on receipt of the final investigation report from the police recommending the dropping of the case is inclined not to take action against the accused. The Code of Criminal Procedure does not require the magistrate to hear the victim in this regard. In the case of **Bhagawant Singh v. Commr of police**,<sup>32</sup> the apex court reiterated that such an opportunity of being heard is a must.

During the time of prosecution also, the victim does not have much of a voice in the proceeding. Even concerning the matters that affect his rights and interests like that of bail decisions, withdrawal of prosecution<sup>33</sup>

Victim's rights in India came into the focus of researchers only by the late 1970's studies<sup>34</sup>. Initiatives by the University of

<sup>28</sup> Gazette of Himachal Pradesh (Sept. 6, 2012)

<sup>29</sup> Gazette of Karnataka (Feb. 22, 2012)

<sup>30</sup> Laxmi v Union of India (2014) 4 SCC 427

<sup>31</sup> (1979) 4 SCC 719

<sup>32</sup> (1985) 2 SCC 537

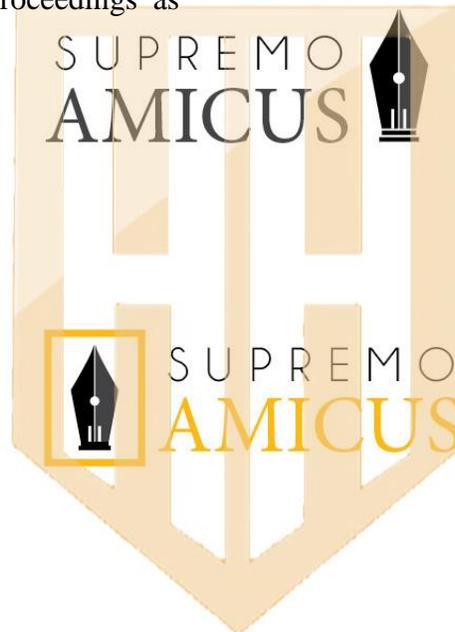
<sup>33</sup> Article 321, CrPC

<sup>34</sup> MEASURES FOR CRIME VICTIMS IN THE INDIAN CRIMINAL JUSTICE SYSTEM by



Madras<sup>35</sup> in the early 1980s concluded in the foundation of the Indian society of victimology<sup>36</sup>, which drafted a Bill on victim assistance in 1996. Apart from various recommendations of law commissions<sup>37</sup> and the National Commission to review the working of the constitution, an important epoch concerning the victim's right to compensation is recommendations of the Malimath Committee on reforms of the criminal justice system in 2003. The committee recommended a holistic "justice" for victims of crime by allowing them to seek compensation for the loss or injury as a matter of right in criminal proceedings as well.

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Kumaravelu Chockalingam  
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<sup>35</sup> MEASURES FOR CRIME VICTIMS IN THE INDIAN CRIMINAL JUSTICE SYSTEM by Kumaravelu Chockalingam  
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<sup>36</sup> In 1992, Indian Society of victimology was founded to disseminate knowledge and awareness about the

plight to victims of crime, to discuss about their problems and also mobilize support for the enactment of new laws for them. MEASURES FOR CRIME VICTIMS IN THE INDIAN CRIMINAL JUSTICE SYSTEM, by Kumaravelu Chockalingam  
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<sup>37</sup> Forty first, one fifty-fourth and one fifty-fifth Law Commission Report