

Revisiting Indian Victim Compensation Law: Need For An Independent Victim Law

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Abstract

Compensatory jurisprudence is an emerging concept of the criminal justice delivery system in the recent times. The guiding principle of the recognition of the victim's right to compensation is to address the awful impact of the commission of crime upon the victim. This new development of the criminal justice system towards recognition of victim's right to compensation stems from judicial pronouncements and recommendations made by the reports of various committees and commissions constituted by the Government, from time to time, to inquire into the existing criminal justice system. Due to the emergence of compensatory jurisprudence, both the Union and State Governments have formulated and notified various victim compensation schemes aimed at developing a legislative framework for the recognition of victim's right to compensation in India. However, the major weakness of the recent law is that the rights of victim are thinly projected and it leaves the provision of compensation to the sole discretion of the judge. The present paper explores the legal framework recognizing victim's right to compensation and a need of constitutionalisation of victim's rights. Further, the paper discusses the difficulties of the victims of crime in getting compensation under the Code of Criminal Procedure, 1973 and non-exercise of discretionary power by the trial Courts. This paper also evaluates emerging need of an independent victim legislation to recognize the rights of the victim in par with those of the accused.

Keywords Victims of Crime, Victim's Right to Compensation, Criminal Justice System, Victim Law

1. Introduction

Awarding Compensation to the victim of crime is a novel idea of the criminal justice system. In recent decades, a significant amount of focus has been given to compensatory jurisprudence at both international and national levels. Several victims' rights instruments have been developed for the purpose of improving the misery of the victims in the criminal justice system. The United Nations, the Council of Europe, and the European Union, are just a few examples of organisations which have adopted these instruments. Domestically, various countries like the United States of America, The United Kingdom and India have enacted victims' rights laws. The object of recognising victim's right to compensation is to address the catastrophic impact of the offence upon the victim.¹ This tendency of the criminal justice system in India to recognition of victim's right to compensation is owing to adoption of various international instruments, judicial pronouncements and reformative steps recommended by the reports of various committees and commissions.

Although the social responsibility of the offender to restore the loss or heal the injury is a part of the punitive exercise, punishing the offender with length of the imprisonment is no reparation to the victim but is futility coupled with cruelty. Victimology shall, therefore, find fulfillment not through barbarity but by mandatory recompense by the offender of the damage inflicted not by giving more pain to the offender but by alleviating the loss of the forlorn. Law should provide for compulsory payment of compensation to the victim by the offender to restore the loss or heal injury caused by reason of the criminal act of the latter.²

The foremost duty of every State is to protect the rights of its citizens. The criminal justice system of the contemporary world has sought to discharge this duty by enacting enormous provisions for advancement of rights of accused of a crime. In fact, it is imperative for the criminal justice system to ensure such rights.³ A wide variety of rights of the accused have

¹ Robert J. Meadows, *Understanding Violence and Victimization*, 25 (Pearson, New York, 2010).

² *Maru Ram v. Union of India*, (1981) 1 SCC 107.

³ *Abdul Rehman Antulay v. R. S. Nayak*, (1992) 1 SCC 225.

exhaustively been recognised under international ⁴ and regional human rights instruments and constitutional texts of the many countries.⁵ But it is obnoxious to note that the legal system does not give similar attention to victims of crime. The carriage of justice is often misjudged to halt at the signature on a judgement; however, the true destination lies at the lap of the victim. The accountability of the Government never ends simply by registering the case of the victim, conducting a proper investigation, initiating the prosecution and sentencing an accused. The Government has a furthermore responsibility towards the victims. In a 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 motion by reporting the crime to the police. However, he has whereupon no further role to play unless the police thinks it necessary.

Victims are unfortunately the forgotten people in the criminal justice system. Victims are the worst sufferers. Victim's family is ruined particularly in cases of death and grievous bodily injuries. This is apart from the factors like loss of reputation, etc. The Court has to take into consideration the effect of the offence on the victims' family even though a human life can not be restored but then monetary compensation will at least provide some succour.⁶ Even when the justice machinery fails to identify the accused or to establish the prosecution case and ensure suitable sentencing of the offender, still the duty remains to compensate the victim.

The ability of the victim of crime to claim compensation from the offender for the loss or injury caused by the crime is often limited to the paucity of necessary means of the offender and identification of the accused. As the objective of the victim compensation is to compensate the victim against the crime because of negligence on the part of the State, the interest of the victim of crime can not be sufficiently achieved unless the State undertakes such responsibility.

⁴ The Universal Declaration of Human Rights, 1948, art. 10; The International Covenant on Civil and Political Rights, 1966, art. 14.

⁵ The Constitution of India, art. 22; 5th Amendment of the Constitution of United States, 1776; The Constitution of the Republic of South Africa, 1966, art. 35.

⁶ *Karan v. State NCT of Delhi*, 277 (2021) DLT 195 (FB).

The criminal justice is meant for doing justice to all: the accused, the society and the victim.⁷ Justice remains incomplete without adequate compensation to the victim. Justice must be reformatory for the offender and restorative for the victim. Therefore, it is a valid expectation of victim that he must be given restorative support compounded with monetary compensation. Such compensation is bound to be paid in public law remedy with respect to **Article 21**.⁸ The horizons of **Article 21** have been expanded by the judiciary to include victim's right to compensation within the meaning of right to life in several cases.⁹

Sympathizing with the woes of the victims of crime under the criminal justice delivery process and taking note of the obligation to do complete justice under the Constitution of India in defence of human rights, the Supreme Court and the High Courts in India have lately evolved the practice of awarding compensatory remedies not just in terms of money but in terms of other appropriate remedies. Medical justice to the Bhagalpur blinded victims, rehabilitation justice to the communal violence victims and compensatory justice to the union carbide victims are illustrations of the liberal grant of relief and remedies by the Supreme Court. In all these cases, the Apex Court has done justice to the victim, by awarding monetary compensation and a restorative settlement where State or its instrumentalities failed to protect the life, dignity and liberty of victims. However, the scope for remedy to the victim by invoking writ jurisdiction was very limited and inadequate which called for the introduction of a specific provision ensuring monetary compensation to the victim of crime regardless of whether the offender is identified, prosecuted or convicted. **Section 357A** was inserted into the **Code of Criminal Procedure [Cr.PC], 1973** accordingly.

2. Emergence of Monetary Compensation as Criminal Remedy

Since ancient time, restitution has been working as one of the punitive measures in many jurisdictions. The principle of compensation to the victims of crime or wrong has, therefore,

⁷ *Ibid.*

⁸ The Constitution of India.

⁹ *Rudal Shah v. State of Bihar*, (1983) 4 SCC 141; *Bhim Singh v. State of J. & K.* (1985) 4 SCC 677; *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746; *Railway Board v. Chandrima Das*, (2000) 2 SCC 465.

been integral to most of the legal systems. The primitive societies made no segregation of the civil and the criminal law but called for the offender to recompense the victim or his dependant for any injury or loss caused by reason of the criminal act of the offender. However, the paramount consideration underlying such restitution was that it was meant to only protect the offender from the brutal retaliation by the victim or the community which is averse to the principle of compensating the victim for the loss or injury. Therefore, such restitution in ancient societies was a tool employed by the offender to restore the peace and tranquility which he had once disturbed.¹⁰

The term 'restitution' in earlier common law was used to mean and embrace the return of a particular thing or condition.¹¹ But, over the years the gamut of the term has been extended to cover not just the return of something to the rightful owner and to the status quo but compensation, recovery or reparation for the profit the offender earned from or injury or loss caused to the victim.¹² In the 12th and the 13th century a difference was made between civil wrong and public wrongs.¹³ In the course of time, law marked off the allocation of punishment in both civil wrong and crime. Damages were granted as a victim's right in civil wrongs as averse to a remedy in a criminal offence. Accordingly, criminal law was dispensed with the burden of compensation to rehabilitate victims because the criminal justice is administered primarily either to reform or to punish the offender, as contrasting to rehabilitating the victim. This strict principle of law was a hindrance to the victim of crime. Such law has, in last few years, undergone an extensive change, since the global community advocated for the protection of the victims of crime and their rights which both the legislature and the Court have disregarded in criminal cases for years.

¹⁰ *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.* (2007) 6 SCC 528.

¹¹ R.I. Mawby and M.L. Gill, *Crime Victims-Needs, Services, and the Voluntary Sector*, 51 (Tavistock publications, London, 1987).

¹² John Bourdeau, "Restitution and Implied Contracts" 1 *American Journal of Law* 66 (2011).

¹³ K.D. Gaur, "Justice to Victims of Crime: A Human Rights Approach, in *Criminal Justice: A Human Rights Perspective of Criminal Justice Process in India* 350 (2004).

Historically, Criminal Justice Delivery System seems to exist to protect the interests and values of the powerful section of the society. The manner in which crimes are defined and the system is designed and administered shows that there is an element of truth in the above statement even in modern age. Nevertheless, over the centuries the predominant function of criminal justice is discharged to protect all the citizens from injury or loss either to their life and property, the principle being that it is the paramount obligation of the State under the rule of law. The omnipotent State does the same by depriving citizens of the power to take law into their own hands and by using its power to satisfy the sense of vengeance through suitable sanctions. It is argued that the State itself is the victim when a subject commits a crime and thereby questions its authority and law. In the process of this transformation of torts to crimes, the attention of the criminal justice system shifted from the victim who sustained the harm resulting from the failure of the State to the criminal and how the State shall deal with him.¹⁴

Criminal justice was meant to deal with offence, the offender and the way he is prosecuted by the State and the sentence inflicted upon him while the civil law was concerned with the financial and other damage suffered by the victim.

Nevertheless, a scheme designed to provide for restitution to the victim by the offender often causes difficulty since the offender needs to be identified, apprehended and convicted and parallelly, the victim requires to accord resources for that. In addition, restitution scheme may result in the denial of compensation to the victim of crime where the offender is unable to pay such amount as fixed by the Court.¹⁵ Under such circumstances, the most adequate remedy seems to be to set up a State Victim Fund from which the victim is compensated after the commission of crime. Once the offender is convicted, he may be directed, by the Court, to retribute such amount as may be determined by the Court to the State. This is to ensure that victim compensation is not denied either because of the inability of the offender to pay or a discharge or an acquittal of the accused due to a dearth of

¹⁴ Government of India, "Report of the Committee on Reforms of Criminal Justice System" 77 (Ministry of Home Affairs, 2003).

¹⁵ M. Novak, "Crime Victim Compensation-The New York Solution" 6 *Alb. Law Review*, 717 (1971).

evidence.¹⁶ Accordingly, laws have been enacted by many countries including, England, Ireland, Canada, Australia, New Zealand, and the United States of America providing for compensation by the Court administering criminal justice.

As the clamour for victims' rights gained momentum, keeping in mind the broad principles enumerated in the **United Nation's Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 [the 1985 UN Declaration]** adopted by the General Assembly of the United Nations, a statutory scheme of compensation payable by the state was adopted by many countries across the globe. The 1985 UN Declaration stemmed from the broad realisation of civil society all over the free world that victim of a crime did not deserve to be treated as an ignored specie. The instrument declared certain broad principles which were to the effect that the victim of a crime is entitled to access to the mechanisms of justice, to prompt redress for the harm sustained and right to participate in criminal proceedings. The 1985 UN Declaration did recognise four sorts of rights and entitlements of the victims of crimes viz., (a) access to justice and fair treatment, (b) right to restitution, (c) personal assistance and support services and (d) Compensation.¹⁷

Victim's right to compensation in India was, for the first time, statutorily recognised under **Section 545** of the old **Code of the Criminal Procedure, 1898**. Such right was available merely where a substantive sentence of fine was imposed and limited to the amount of fine actually realized. Nevertheless, this provision sparingly invoked by the Court.¹⁸ Subsequently, the Code of Criminal Procedure re-introduced **Section 545** as **Section 357** which makes provision for payment of compensation to victims. Consequently, the right to compensation was read as a part of the fundamental right to life under **Article 21** of the Constitution. Therefore, it was very important to introduce a specific provision which should be focused on restorative measures to the victim regardless of the

¹⁶ *State v. Elits* (1980) 94 Was. 2d 489.

¹⁷ G. S. Bajpai and Shriya Gauba, *Victim Justice: A Paradigm Shift in Criminal Justice System in India* 4 (Thomson Reuters, New Delhi, 1st edn., 2016).

¹⁸ K. I. Vibhute, "Victims of Rape and their right to live with Human Dignity and to be compensated: Legislative and Judicial Responses in India" 41(2) *Journal of the Indian Law Institute* 226 (1999).

outcome of criminal prosecution. Accordingly, **Section 357A** was inserted in the Cr.PC, 1973.

3. Evolution of victim Compensation in India

The history of Indian Criminal Law can be traced back to the age of British Rule in India. However, the ancient history in India witnessed the fact that the victim of crime had sufficient provisions of restitution by means of compensation for injury or loss suffered by the victim. The injured or the victim of a crime was the central figure in the criminal justice process and had a vital say in matters connected with restitution or retribution. But gradually private vengeance paved the way to public justice.¹⁹ The ancient Hindu law giver implicitly recognized the necessity of directly compensating the victim. It was the duty of the king to safeguard the property of the people. The primary duty of restitution was fixed on the king. Accordingly, whatever was stolen from any person in one's kingdom had to be restored by the king. If the king could not restore the stolen articles, he would recover their price for the owner by apprehending the thief. It was also deemed to be his duty to pay the price to the owner from his treasury, and in his turn, he could recover the same from the village officers who, due to their dereliction of duty, were responsible for the thief fleeing from the kingdom.²⁰ According to the ancient Hindu Law, award of compensation was considered as a royal right. Manusmriti provided that the offender must pay damages and expenses of cure to the victim for the injuries suffered.²¹

At the present time, the Indian criminal justice system is based on the assumption that the claims of a victim of crime are adequately satisfied by the conviction of the offender.²² There are five possible statutory provisions under which compensation may be awarded to the victims of crime, namely:

- The Criminal procedure Code, 1973;
- The Fatal Accident Act, 1855;
- The Motor Vehicles Act, 1988;
- The Probation of Offenders Act, 1958; and

¹⁹ V.N. Rajan, *Victimology in India 2* (Ashish Publishing House, New Delhi, 1995).

²⁰ Chandra Sen, *Victims of Crime-their Rights and human Rights* 21 (Deep & Deep Publications Pvt. Ltd., 2010).

²¹ *Id.* at 20.

²² *Supra* note 13 at 351.

- Constitutional remedies for human rights' violations.

The compensatory jurisprudence has its roots in the Constitution of India especially in **Part III** and **Part IV**, which form the bulwark for a new social order in which justice, social and economic, is ensured to all. The mandate provided for in the Constitution broadly creates the constitutional underpinnings for victimological jurisprudence in India.²³

The original provision of restitution in Indian legal system is found in **Section 545(1)(b)** of the Code of Criminal Procedure, 1898. The forty-first Report of the Law Commission of India on the Code of Criminal Procedure was submitted in September, 1969. This Commission was constituted by Government of India to undertake a detailed examination of the Code with a view to its complete revision. The commission in its report under Chapter XLVI exhaustively analysed **Section 545** of the **Code of Criminal Procedure of 1898** and proposed a number of amendments thereto. This report recommended, "under clause (b) of sub-Section (1) of **Section 545**, the court may direct "payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the court, recoverable by such person in a Civil Court." The significance of the requirement that compensation should be recoverable in a Civil Court is that the act which constitutes the offence in question should also be a tort. The word "substantial" appears to have been used to exclude cases where only nominal would be recoverable. We think it is hardly necessary to emphasize this aspect, since in any event it is purely within the discretion of the Criminal Courts to order or not to order payment of compensation, and in practice they are not particularly liberal in utilising this provision. We propose to omit the word "substantial" from the clause."²⁴ Thus, this report specified the significance of the recoverability of compensation that it should be enforceable in a civil court akin to the public remedy available to tort. The gravity of compensability was earlier demarcated by using the word "substantial" which excluded cases where only nominal

²³ Law Commission of India, "154th Report on the Code of Criminal Procedure, 1973" (1996).

²⁴ Law Commission of India, "41st Report on the Code of Criminal Procedure" para. 46.12 (September, 1969), available at: <http://lawcommissionofindia.nic.in/1-50/Report41.pdf> (last visited on October 2, 2022).

damages would be recoverable. However, the Law Commission objected to such demarcation since in any event this was purely within the discretion of the Criminal Courts to order or not to order payment of compensation to victims and that was barely exercised by the courts. The report, therefore, recognised that Criminal Courts had the discretion to order or not to order payment of compensation.

In pursuance of the 41st Report the Law Commission of India, the Government of India prepared and introduced the **Code of Criminal Procedure Bill, 1970**, which aimed at revising **Section 545** and re-introducing it as **Section 357**. 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, compensation can be awarded irrespective of whether the offence is punishable with fine or fine is actually 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 injury, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors.”²⁵ Thus, “the Statement of Objects and Reasons underlying the Bill was that **Section 545** only provided compensation when the court imposed a fine and the amount of compensation was limited to the amount of fine whereas under the new provision (**Section 357**), compensation can be awarded irrespective of whether the offence is punishable with fine and if fine is actually imposed.”²⁶

The Code of Criminal Procedure subsequently incorporated the changes proposed in the aforesaid Bill of 1970. In the Statement of objects and Reasons, it was specified that **Section 357** was “intended to provide relief to the poorer sections of the community” whereas, the amended Code authorised the Criminal Courts to order payment of compensation by the accused to the victims of crime “to a

²⁵ The Code of Criminal Procedure Bill, 1970, India, *available at*: http://mha.nic.in/crpc_bill1970.pdf (last visited on October 4, 2022).

²⁶ *Karan v. State of NCT of Delhi*, 277 (2021) DLT 195 (FB).

larger extent” than was previously permissible under the Code. **Section 357** empowers the court to award compensation to the victim having due regard to the nature of injury, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors.

4. Approach of Indian Judiciary towards Victim Compensation

Section 357 of the Code was enacted to bring about considerable changes in the existing system. The earlier approach to demarcation by the use of the word “substantial” was shifted with the deletion of the same from the sub-Section (1) of **Section 357**. In addition to this, two new sub-sections were inserted. A new sub-section (3) empowers the court to order the accused person to pay compensation to the victim even in cases where fine does not form part of the sentence. It is more liberal provision. And sub-Section (4) provides that an order awarding compensation may also be made by an Appellate Court or by the High Court or by Court of Session when exercising its power of revision. Sub-section (4) therefore, describes the jurisdiction and powers of these courts concerning the section.

In *Sarwan Singh v. State of Punjab*²⁷, the Apex Court elaborately discussed **Section 357** combined with the corresponding provision in the 1898 Code. The court observed that the law which enables the court to direct compensation to be paid to the dependants is found in **Section 357** of the **Code of Criminal Procedure (Act No. 2 of 1974)**. The corresponding provision in the 1898 Code was **Section 545**. **Section 545** of the Code of the Criminal Procedure (Act No. 5 of 1898) was amended by Act No.18 of 1923 and by Act No. 26 of 1955. **Section 545 (1) (bb)** of the Code of 1898 was introduced by section 110 of Amending Act 26 of 1955. By the amendment the court is enabled to direct the accused, who caused the death of another person, to pay compensation to the persons who are, under the **Fatal Accidents Act, 1855**, entitled to recover damages from the persons sentenced, for the loss resulting to them from such death. In introducing the amendment, the Joint Select Committee stated “when death has been caused to a person, it is but proper that his heirs and dependants should be compensated, in suitable cases, for the loss resulting to them from such death, by the person who was

²⁷ (1978) 4 SCC 111.

responsible for it.”²⁸ The Committee proceeded to state that though **Section 545** of the Code as amended in 1923 was intended to cover such cases, the intention was not however very clearly brought out and therefore in order to focus the attention of the courts on this aspect of the question, the Committee have amended **Section 545** and it has been made clear that a fine may form a part of any sentence including a sentence of death and it has also been provided that the persons who are entitled under the **Fatal Accident Act, 1855**, to recover damages from the person sentenced may be compensated out of the fine imposed. The Statement of Objects and Reasons to the Amending Act of 1955 also expressed its full agreement with the suggestion made by Joint Committee that at the time of awarding judgement in a case where death has resulted from homicide, the court should award compensation to the heirs of the deceased. The committee felt that this will result in settling the claim once for all by doing away with the need for a further claim to a civil court, and avoid needless worry and expense to both sides. The Statement of Objects and Reasons of the Act²⁹ incorporated the view of the Joint Committee that, in suitable cases, the person who causes death should compensate the heirs and dependents of the deceased for the loss resulting from the death. The committee further agreed that in cases where the death is the result of negligence of the offender, appropriate compensation should be awarded to the heirs. By the introduction of clause (bb) to **Section 545 (1)**, the intention of the legislature was made clear that, in suitable cases, the heirs and dependents should be compensated for the loss that resulted to them from the death, from a person who was responsible for it. The view was also expressed that the court should award compensation to the heir of the deceased so that their claim would be settled finally.

This object is sought to be given effect to by **Section 357** of the new Code³⁰ (Act No. 2 of 1974). **Section 357 (3)** provides that when a court imposes a sentence, of which fine does not form a part, the Court may, when passing judgement, 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

²⁸ Government of India, “Report of Joint Select Committee on the Code of Criminal Procedure, 1898” (1955).

²⁹ Amending Act 26 of 1955.

³⁰ The Code of Criminal Procedure, 1973 (Act 2 of 1974).

accused person has been so sentenced. The object of the section therefore, is to provide compensation payable to the persons who are entitled to recover damages from the person sentenced even though fine does not form part of the sentence. Though **Section 545** of 1898 Code enabled the court only to pay compensation out of the fine that would be imposed under the law, by **Section 357 (3)** when a court imposes a sentence, of which fine does not form a part, the Court may direct the accused to pay compensation.”³¹ In awarding compensation it is necessary for the court to decide whether the case is a fit one in which compensation has to be awarded. If it is found that compensation should be paid, then the capacity of the accused to pay compensation has to be determined. In directing compensation, the object is to collect the fine and pay it to the person who has suffered the loss. The purpose will not be served if the accused is not able to pay the fine or compensations. If the accused is in a position to pay the compensation to the injured or his dependents to which they are entitled to, there could be no reason for the court not directing such compensation. A person, who is, due to negligence, causing injury or is made vicariously liable, is bound to pay compensation. It is appropriate to direct payment of compensation by the accused who is guilty of causing an injury with necessary *Mens Rea*, to the person who has suffered injury.

In the case of *Palaniappa Gounder v. State of Tamil Nadu*³², the Court observed that it can not, however, be put aside that since according to **Section 357 (1) (c)** of the new Code and its precursor, **Section 545 (1) (bb)** of the Old Code, compensation can only come out of fine, it is always necessary to consider in the first instance whether the sentence of fine is at all called for, particularly when the offender is sentenced to death or life imprisonment. In fixing the amount of fine or compensation, it is the duty of the court to take into account the nature of the crime, the injury suffered, the justness of the claim for compensation, the capacity of the accused to pay and other relevant factors. As observed by the Court in *Adamji Umar Dalal v. The State of Bombay*³³, determination of the right measure of punishment is often a point of great difficulty and no hard and fast rule can be laid down, it being a matter of discretion which is to be guided by a variety of considerations

³¹ *Supra* note 3.

³² AIR 1977 SC 1323.

³³ (1952) SCR 172.

but the court must always bear in mind the necessity of maintaining a proportion between the offence and the penalty proposed for it. Speaking for the court Mahajan J. observed that in imposing a fine it is necessary to have as much regard to the pecuniary conditions of the accused persons as to the character and magnitude of the offence, and where substantial term of imprisonment is inflicted, an excessive fine should not accompany it except in exceptional cases.

Krishna Iyer, J. speaking for the Court in *Maru Ram v. Union of India*³⁴, held that Victimology, a burgeoning branch of humane criminal justice, must find fulfilment, not through barbarity but by, compulsory recoupment by the wrong-doer of the damage inflicted, not by giving more pain to the offender but by lessening the loss of the forlorn. While social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty.

The Apex Court in *Hari Singh v. Sukhbir Singh and Others*³⁵, held that the provision of law in support of order of compensation can be traced to **Section 357 of CrPC**. Sub-Section (1) of **Section 357** provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. Sub-Section (3) of **Section 357** is also an important provision but Courts have seldom invoked it, perhaps due to ignorance of the object of it. It empowers the Courts to award compensation to victims while passing judgement of conviction. In addition to conviction, the Court may order the accused person to pay some amount by way of compensation to victim who has suffered by reason of the act of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to re-assure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to, crimes. It is indeed a step forward in our criminal justice system. The court, therefore, recommended to all courts to exercise this power liberally so as to meet the ends of justice in a better way. In this very case, the Supreme Court bewailed the

³⁴ (1981) 1 SCC 107.

³⁵ (1988) 4 SCC 551.

failure of the Courts in awarding compensation to the victims in terms of **Section 357** of the Code.

The Court further observed that the payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal proportions, unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary for installments, may also be given. The Court may enforce the order by imposing sentences in default.³⁶

In *Balraj v. State of U.P.*³⁷ and *Baldev Singh v. State of Punjab*³⁸, the Apex Court held that **Section 357 (3)** Cr.PC provides for ordering of payment of compensation to the victim by the accused. It is an important provision and it must also be noted that power to award compensation is not ancillary to other sentences. It is an additional power.

The Court in *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.*³⁹ said that the distinction between sub-Section (1) and (3) of Section 357 is apparent. Sub-section (1) provides for application of an amount of fine while imposing a sentence of which fine forms a part; whereas sub-Section (3) calls for a situation where a court imposes a sentence of which fine does not form a part. The purposes for application of fine have been set out in clauses (a) to (d) of sub-Section (1) of **Section 357**. Clause (b) of sub-section (1) provides for payment of compensation to the victim, out of the amount fine. The purpose enumerated in clause (b) of sub-Section (1) of **Section 357** is the same as sub-Section (3) thereof, the difference being that whereas in a case under sub-Section (1) fine imposed forms a part of the sentence, under sub-Section (3) compensation can be directed to be paid when fine does not form a part of the sentence.

The fine can be imposed only in terms of the provisions of the Act. When, however, fine is not imposed, compensation

³⁶ *Ibid.*

³⁷ (1994) 4 SCC 29.

³⁸ (1995) 6 SCC 593.

³⁹ (2007) 6 SCC 528.

can be directed to be paid to the person who has suffered the loss or injury by reason of commission of offence. Clause (b) of sub-section (1) only provides for application of amount of fine which may be in respect of the whole amount or a part thereof. Sub-Section (3) of **Section 357** seeks to achieve the same purpose.

When the Court does not award a fine along with a substantive sentence, **Section 357 (3)** comes into play and it is open to the court to award compensation to the victim or his family.⁴⁰ Clause (b) of sub-section (1) of **Section 357** and sub-Section (1) of **Section 357** and sub-section (3) of **Section 357** seek to achieve the same purpose. What it is necessary is to find out the intention of the legislature and the object sought to be achieved.

Yet again the Court observed that consideration for payment of compensation is somewhat different from payment of fine. Before issuing a direction to pay compensation, it is necessary to probe into the paying capacity of the accused and, the purpose for which it is directed to be paid. While awarding compensation the court must assign some reasons for which it is ordered to be paid and enumerate the other relevant factors which the court counts on. Therefore, an enquiry in this behalf albeit summary in nature may be necessary. So that the amount of compensation sought to be imposed must be reasonable and not arbitrary. However, sub-Section (3) of **Section 357** does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. And this jurisdiction can not be exercised at the whims and caprice of a judge.⁴¹ Much as the legislature did not put a ceiling limit with regard to the amount of compensation leviable upon the accused, the discretionary jurisdiction thereto must be exercised judiciously.

An unreasonable amount of compensation, observed the Supreme Court, should not be directed to be paid by the Court while exercising its power under sub-Section (3) of **Section 357**. As a general rule, it should be lesser than the amount which can be granted by a civil court upon appreciation of evidence brought before it for the loss which might have reasonably been suffered by the plaintiff.⁴² A criminal case is not a

⁴⁰ *Rachhpal Singh v. State of Punjab*, (2002) 6 SCC 462.

⁴¹ *Supra* note 15.

⁴² *Supra* note 15.

substitution of a civil suit. For that reason the jurisdiction of the civil court, in this behalf, for realisation of the amount in question must also be taken into account. Sub-Section (5) of **Section 357** provides for some guidelines. According to this provision, at the time of awarding compensation in any subsequent civil suit pertaining to the same matter, the Court shall take note of any sum paid or recovered under this section.

In *Ashwani Gupta v. Government of India*⁴³, the Apex Court noted that mere punishment of the criminal can not give much solace to the family of the victim. As the civil action for damages is a long cumbersome judicial process, the compensation under **Section 357** of the Code of Criminal Procedure would be more useful and effective remedy for the victims. It is now a well-accepted proposition in most of the jurisdictions that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the violation of the fundamental right to life of a citizen.

It is, therefore, not only statutory empowerment under **Section 357 (3)** of the appellate court to pass an appropriate order in respect of compensation but also the mandatory duty of every court, at trial stage and appellate court to consider and make an order of fair and reasonable compensation, depending upon gravity of offence, severity of mental and physical injury suffered by the victim, damage suffered by the victim, and the capacity of the accused to pay.

Reference may also be made to the decision of the Supreme Court in *Ankush Shivaji Gaikwad v. State of Maharashtra*⁴⁴, where the Court reiterated the law laid down in *Hari Singh's* case and held that **Section 357** confers a power coupled with a duty on the Court to apply its mind to the question of awarding compensation in every criminal case, even though the language of **Section 357** of Cr.P.C. at a glance may not suggest that any obligation is not cast upon a Court to do so. Because the legal position is well-settled that cases may arise where a provision is mandatory despite the use of the language makes it discretionary. The Court, therefore, summed up that while the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the

⁴³ 2005 (117) DLT 112.

⁴⁴ (2013) 6 SCC 770.

question in every criminal case. It necessarily follows that the Court must disclose that it has applied its mind in every criminal case.

The Court further observed that application of mind to the question is best disclosed by recording reasons for awarding or refusing compensation. It is self-evident that for any exercise involving application of mind, the court should have the necessary material which it analyse to arrive at a fair, just and reasonable conclusion. It is also undeniable fact that the occasion to consider the question of award of compensation would arise only after the court passes an order of conviction against the accused. Capacity of the accused to pay compensation constitutes an important aspect of any order under **Section 357**. An enquiry in this behalf even in a summary way is necessary unless the facts as surfacing in the course of trial are so intelligible that the Court considers it unnecessary to do the same. Such an enquiry may precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation.

The Supreme Court earlier in *Maya Devi (Dead) through LRs vs. Raj Kumar Batra (Dead) through LRs*⁴⁵ in analogous words held that disclosure of application of mind is best demonstrated by recording reasons in support of the order or conclusion. And it was said that there is nothing like a power without any limits or constraints. That is so even when a court or other authority may be vested with wide discretionary power, for even discretion has to be exercised only along well-recognised and sound juristic principles with a view to promoting fairness, inducing transparency and aiding equity.

The ignorant attitude of the lower judiciary was intolerable to the Apex Court when it apparently observed that: “we regret to say that the trial Court and the High Court appear to have remained oblivious to the provisions of **Section 357** of the Cr.PC. The judgements under appeal betray ignorance of Courts below about the statutory provisions and the duty cast upon the Courts. Remand at this distant point of time does not appear to be a good option either. This may not be a happy situation but having regard to the facts and the circumstances of the case and the time lag since the offence

⁴⁵ (2010) 9 SCC 486.

was committed, we conclude this chapter in the hope that the Courts remain careful in future.”⁴⁶

The Delhi High Court’s Judgement on victims’ right to compensation, in *Karan v. State N.C.T. of Delhi*⁴⁷ is a landmark in criminal jurisprudence. The court has secured the right to restitution for victims of crime. The progressive impact of the judgement on victims’ rights would undoubtedly be unprecedented and monumental. The importance of the verdict lies in the use of **Victim Impact Report (VIR)** to assess and determine the amount of compensation. It was held that after conviction of the accused, the Trial Court shall direct the accused to file an affidavit his assets and income in such format as prescribed. Thereafter, Upon receipt of the affidavit of the accused, the Trial Court shall immediately send the copy of the judgement and the affidavit of the accused, and the document filed along with the affidavit to the District/ State Legal Service authority to conduct a summary enquiry to compute the loss suffered by the victims and paying capacity of the accused and shall submit the Victim impact Report containing their recommendation to the Court. The trial Court shall subsequently consider the Victim Impact Report of the Legal Service Authority with respect to the impact of crime upon the victims, paying capacity of the accused and expenditure incurred on the prosecution; and after hearing the parties including the victims of crime, the Court shall award the compensation to the victim(s) and cost of the prosecution to the State, if the accused has the capacity to pay the same. The Court shall direct the accused to deposit the compensation with Legal Service Authority whereupon Legal Service Authority shall disburse the amount to the victim in accordance with their Scheme.

Delhi High Court’s conception of Victim Impact Report slightly differs with the traditional Victim Impact Statement (VIS). VIS is an instrument of victim participation which let victims inform the court of the impact of crime thereupon. VIS provides victims with the opportunity of addressing the court and, hence, works towards providing them assurance about their concerns being heard and addressed by the Court. Whereas, VIR will not be directly made by the Victim before the Court but will be prepared and submitted by the Legal Service

⁴⁶ *Supra* note 19.

⁴⁷ *Supra* note 3.

Authority which shall conduct a summary inquiry to compute the loss suffered by the victim and paying capacity of the accused.

In addition to the above, the Court in its Verdict⁴⁸ observed that victims are unfortunately the forgotten persons in the criminal justice delivery system. Victims are the worst sufferers. A family of the Victim is ruined particularly in cases of death and grievous bodily injuries. This is apart from the factors like loss of reputation, humiliation etc. The Court shall take into account the effect of the offence on the victim's family even though human life can not be restored but then monetary compensation will at least provide some solace. The criminal justice is meant for doing justice to all- the accused, the society and the victim. Justice remains incomplete without adequate compensation to the victim. It can be complete only when the victim is also adequately compensated.

In this context, the Court refers to **Sections 357 and 357A** of Cr.PC. **Section 357** empowers the Court to award compensation to the victims who have suffered loss or injury by reason of the act of the accused. Mere punishment of the offender can not give much solace to victims' family. Moreover, civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the Court is, therefore, useful and perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who might have been the breadwinner of the family. **Section 357** was held to be a constructive approach to crimes. It is indeed a step forward in our criminal justice system. The power under **Section 357** is not ancillary to other sentences but in addition thereto. The word "may" in **Section 357** means "shall" and therefore, **Section 357** is mandatory, and casts a duty upon the Court to apply its mind to the question of compensation and to record reasons for passing, or not passing, orders with regard to the use of **Section 357**, in every criminal case.

It is apparent that much as **Section 357** empowers the Court to award compensation to victims who have suffered loss or injury by reason of the act of the accused, the Courts below remained oblivious to the provisions of the same. As a result of which, the Supreme court on numerous occasions observed that the power under **Section 357** is to be exercised

⁴⁸ *Ibid.*

liberally to meet the ends of justice in a better way. The judgement under appeal also betrayed ignorance of the courts below about the statutory provisions and the duty cast upon the Courts under this section. Eventually, in a landmark verdict in *Ankush Shivaji Gaikwad v. State of Maharashtra*⁴⁹ the Apex Court held that it is the mandatory duty of the Court below to apply its mind to the question of compensation and record the reason for awarding or refusing an order of compensation under **Section 357**. The Courts, therefore, shall consider **Section 357** Cr.PC in every criminal case and if the Court fails to make such an order of compensation it must furnish reasons.

Even though the principle underlying **Section 357** is similar to that envisaged in the 1985 UN Declaration, its application is limited to where firstly, the accused is convicted, secondly, either the compensation is recovered in the form of a fine, when it forms a part of the sentence or a Magistrate may order any amount to be paid to compensate for any loss or injury by reason of the act for which the accused has been sentenced and thirdly, in awarding the compensation the capacity of the accused has to be taken into consideration by the Magistrate.⁵⁰ The dreary victim compensation provision is because of the judges have seldom invoked the same, which is the vanishing point of victim compensation law in India.

5. Limitations of Section 357 of the Cr.PC

The Trial Courts found some limitations while applying the provisions of **Section 357** of the Code of Criminal Procedure. Firstly, the courts are restricted by the language of **Section 357**. **Section 357 (1) (b)** provides that the Court may pass orders for only such compensation as may otherwise be recoverable in a civil Court. It, thus, appears that the language of this Clause imposes a constraint on the court to award compensation to victims when compensation is not recoverable by such person in a Civil Court.

Secondly, the major weakness in the jurisprudence of **Section 357** is that it can be invoked only after a successful

⁴⁹ *Supra* note 27.

⁵⁰ N.R. Madhava Menon, "Victim Compensation Law and Criminal Justice: A Plea for A Victim Orientation in Criminal Justice", in *Criminal Justice: A Human Rights Perspectives of the Criminal Justice Process in India*, 362 (2004).

conviction of the accused. Therefore the cases where the accused has not been identified, prosecuted and convicted; or the police submit the Final Report or Summary Report disclosing the commission of the offence, but that such an offence has not been committed by the accused who is sought to be prosecuted, or that the accused has not been identified, are not covered by the provisions of **Section 357**. In such occasions, the Court is not entitled to invoke **Section 357** to award compensation to victims who has suffered loss or injury. And payment of compensation by the offender is not possible where there is acquittal or where the offender is not apprehended.

Thirdly, the courts are limited by the lack of a uniform mechanism under which they may award compensation to the victim. Owing to the absence of a well-settled principle to compute the loss suffered by the victims and the paying capacity of the accused, the Courts often find it difficult to grant compensation under this section. Furthermore, non-existence of sentencing guidelines hinders the court from applying the law. And **Section 357** does not delineate the time timeline for payment of compensation. However, even though the judgement in *Ankush Shivaji Gaikwad*⁵¹ marked a watershed in victim jurisprudence in India, it has also failed to address these issues.

Fourthly, **Section 357** casts the entire burden of payment of compensation upon the convict and therefore the amount of compensation granted by the Court hinges on the paying capacity of the convict, which is averse to the policy of joint liability of the state and the offender. However, according to 'Social Contract' as mentioned in Plato's Republic, the men entered into an agreement by which they surrendered the whole or a part of their freedom and rights to the 'Government' or 'Sovereign' and the Government on its part guaranteed everyone of them the protection of his life and property. Thus the State is responsible for the protection of the life and property of its subjects, and if it fails to do so, it must pay for the loss. Coming then to **Section 357**, it appears that it does not apportion the liability for payment of compensation to the State.

Fifthly, **Section 357 (2)** further provides that if the fine is imposed in a case which is subject to appeal no such payment

⁵¹ *Supra* note 27.

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.⁵² Henceforth, the payment of compensation remains suspended till the limitation period for appeal expires or if an appeal is preferred, till the appeal is finally disposed of. The delay in realisation of the amount often adds to the plight of the victim who is in urgent need of monetary relief. **Sub-Section (2)** of this section, therefore, does not foresee an eventuality where a victim may require an interim compensation in an emergency situation.

Nevertheless, in response to some of these limitations, Delhi High Court in *Karan v. State N.C.T. of Delhi*,⁵³ developed certain guidelines for awarding compensation and used a new concept of **Victim Impact Report (VIR)** to reckon the quantum of compensation. Delhi High Court's version of VIR is broadly based on the concept of Victim Impact Statement (VIS), but with some significant modifications. As per the new guidelines laid down thereunder, the VIR will not be directly made by the victim but shall be submitted to the Court by the Delhi State Legal Services Authority (DSLISA), with its recommendations, after conducting a Summary Inquiry to reckon the loss suffered by the victim and paying capacity of the accused, after a successful conviction.

The Trial Court shall thereafter consider the Victim Impact Report, and after hearing the parties including the victim, the Court shall award the compensation to the victim(s) and cost of prosecution to the State, if accused has the capacity to pay the same. The Court shall direct the accused to deposit the compensation with the DSLISA whereupon the DSLISA shall disburse the amount to the victim(s) according to their scheme.⁵⁴

6. Criminal Justice Reforms Committee Report and Section 357A

"People by and large have lost confidence in the Criminal Justice System. Victims feel ignored and are crying for attention and justice ...there is need for developing a cohesive system, in which all parts work in co-ordination to achieve the common goal", rightly Observed the Government

⁵² *Supra* note 13, s. 357 (2).

⁵³ *Supra* note 3.

⁵⁴ *Ibid.*

Notification⁵⁵, which constituted the Committee on Reforms of Criminal Justice System under the Chairmanship of Justice V. S. Malimath on 24 November, 2000.

In the report⁵⁶ submitted in 2003, the Committee gave adequate importance to the idea of justice to victims of crime. With reference to history, the report observed that criminal justice system seems to exist to protect the power, the privileged and the values of the elite sections of the society. The way crimes are defined and the system is administered demonstrate that there is an element of truth in the above perception even in modern times.⁵⁷ In the deliberations of the Committee, it was recognised that victims do not get at present the legal rights and protection which they deserve to play their just role in criminal proceedings, which tend to lead to disinterestedness in the proceedings and consequent distortions in administration of criminal justice.⁵⁸

The existing law only envisages the public prosecutor to be the proper authority to plead on behalf of the victim. Though the Code does not completely debar the victim from participating in the prosecution, a counsel engaged by the victim may be given a limited role in the conduct of prosecution, that too only with the permission of the Court.⁵⁹ That reduces the status of victim to a mere prosecution witness. The situation is alarming with regard to the victims who come of vulnerable sections of society.⁶⁰ Not only the victim's right to compensation was put aside except a token provision under the Code of Criminal Procedure but the right to participate as the dominant stakeholder in criminal proceedings was also taken away from him. He has no right to adduce evidence, he can not challenge the evidence through cross examination of witness nor can he advance arguments to influence the decision- making.⁶¹ The Report, therefore,

⁵⁵ Government of India, "Notification dated 24.11.2000" (Ministry of Home Affairs, 2000).

⁵⁶ Government of India, "Report of the Committee on Reforms of Criminal Justice System" (Ministry of Home Affairs, 2003), India, available at: <http://www.mha.gov.in/pdf> (last visited on October 18, 2022).

⁵⁷ *Id.* para. 6.7.1.

⁵⁸ *Id.* para. 6.2.

⁵⁹ *Id.* para. 6.7.8.

⁶⁰ *Id.* para. 6.7.11.

⁶¹ *Id.* para. 6.7.2.

recommended that the law must recognise the right of victim's participation in investigation, prosecution and trial.

Commenting on the provisions of **Section 357 CrPC**, the Report noted that the principle of compensating victims of crime has for long been recognised by the law albeit it is recognised more as a token relief rather than part of punishment or substantial remedy. When the sentence of fine is imposed as the sole punishment or an additional punishment, the whole or part of it may be directed to be paid to the victim as per the discretion of the Court (**Section 357 Cr. PC**). Compensation can be awarded only if the offender has been convicted of the offence with which he is charged.⁶²

Under **Section 357** no award for payment of compensation shall be made by the court where there is acquittal or where the offender is not apprehended. Furthermore, such payment remains suspended until the limitation period for appeal expires or if appeal is filed, until the appeal is finally disposed of. The delay in the disbursement of payment often adds to the plight of the victim of crime. In addition, the offender who fails to pay the fine or compensation is typically required to undergo imprisonment in default of the payment of the same. The result is again refusal of compensation to the victim even in cases which end in conviction of the accused. Thus, the committee succinctly observed that the hopeless victim is indeed a cipher in modern Indian criminal law and its administration.⁶³

Therefore, the need to amend the Code of Criminal Procedure, 1973 has been felt for a long time with a view to dispensing better and quicker justice to the victims of crime. The law Commission of India has also undertaken an exhaustive review of the Code in its 154th Report and made some important recommendations in respect of the provisions concerning victims of crime, apart from others. Adherence to the various recommendations and catering to the need of the victims, the Government of India introduced the Code of criminal Procedure Code Bill, 2006 in the parliament, with the following objectives as enshrined in its prefatory Note-Statement of Objects and Reasons:

“At present, the victims are the worst sufferers in a crime and they do not have much role in the court proceedings. They

⁶² *Id.* para. 6.8.1.

⁶³ *Id.* para. 6.8.6.

need to be given certain rights and compensation, so that there is no distortion of the criminal justice system. The application of technology in investigation, inquiry and trial is expected to reduce delays, help in gathering credible evidences, minimise the risk of escape of the remand prisoners during transit and also facilitate utilisation of police personnel for other duties. There is an urgent need to provide relief to women, particularly victim of sexual offences..."⁶⁴

Having been passed by both houses of Parliament and assented to by the President on 7th January, 2009, the said Bill became an Act, called the Code of Criminal Procedure (Amendment) Act, 2008 which made some significant amendments to the Code. This Act, in respect of victim, is found to deal with the rights of victims in criminal trials and provides that the State shall compensate the victim where the compensation awarded under **Section 357** is not adequate, or where the offender is not traced or identified, but the victim is identified, or where the cases end in acquittal or discharge but there has been a loss or injury suffered by the victim. The amendments, thus, explicitly recognise that victim compensation is a state obligation in all the crimes, whether the offender is apprehended or not, convicted or acquitted.

This Act⁶⁵, after **Section 357** which was left untouched by the amendments, inserted a new **Section 357A** that provides for Victim Compensation Scheme. Sub-Section (1) of **Section 357A** of the Code⁶⁶ obligates every State Government in collaboration with the Central Government to prepare a Victim Compensation Scheme for providing compensation to the victim for any loss or injury caused by the offence. **Section 357A (2)** provides that the District Legal Service Authority or the State Legal Service Authority shall decide the quantum of compensation after the trial Court makes a recommendation for the same. **Section 357A (3)** empowers the trial Court to make recommendation for compensation if the compensation awarded under **Section 357** is not adequate, or where the cases end in acquittal or discharge of the offender. Under **Section 357A (4)**, the victim is entitled to make an application

⁶⁴The Code of Criminal Procedure (Amendment) Bill, 2006, India, *available at*: https://prsindia.org/CRPC_2006_Bill.pdf (last visited on October 22, 2022).

⁶⁵ The Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009).

⁶⁶ *Supra* note 13.

to the State or the District Legal Service Authority for award of compensation in spite of the fact that the offender is not traced or identified and where no trial takes place. **Section 357A (5)** casts a duty upon the State or District Legal Service Authority to award adequate compensation after completing a due enquiry within the period of two months. **Section 357A (6)** empowers the State or the District Legal Service Authority to order for immediate first-aid facility or medical benefits to be made available free of cost, or any other interim relief, to alleviate the woes of the victim.

It, therefore, appears that the **Code of Criminal Procedure (Amendment) Act, 2008**⁶⁷ is one of the most significant legislative measures, though it is not a complete law for victim compensation, to address the lacunae in the Indian legal system, with respect to the victim's right to compensation. Prior to this Amendment Act, the duty to pay compensation was cast merely upon the offender and such payment of compensation was not possible where there was acquittal or where the offender was not apprehended. Furthermore, jurisdiction of the Court was limited to awarding compensation to victim only where compensation was recoverable by him in a civil court and no such disbursement of compensation was possible before the expiry of period of limitation for the appeal or if an appeal be preferred, before the final disposal of the appeal.⁶⁸ However, the legislature enacted this Act in 2008 with the conspicuous intention to implement the right to compensation as enshrined in the international instruments, particularly in the 1985 UN Declaration⁶⁹, and to alleviate the deficiencies of the Criminal law system concerning victim's right to compensation, of the country, including **Section 357 of Cr.PC**. And the insertion of **Section 357A** which introduced a new scheme of compensation, in the Code, marked a paradigm shift in the approach towards the obligation to pay compensation to the victim who has suffered loss or injury caused by the offence.

The amendment for the first time made an attempt to define the term "victim" by inserting **Section 2(wa)**⁷⁰ in the

⁶⁷ *Supra* note 40.

⁶⁸ *Supra* note 13, s. 357.

⁶⁹ The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985.

⁷⁰ "victim" means a person who has suffered any loss or injury by reason of the act or omission for which the accused person

Code and revamp the obsolete laws with respect to the provision of compensation to victims of crime. Unfortunately, it once again leaves the provision of compensation to the sole discretion of the Judge; something that has been rarely exercised of their own accord in the past-the vanishing point of Indian victim compensation law.⁷¹

7. Suggestions and Conclusion

The provisions of **Section 357** of the Cr.PC make no difference between restitution and compensation. Restitution includes reparation made by the offender whereas compensation is paid by the State. The vagueness is likely to continue unless this difference is statutorily recognised in a separate legislation by Parliament. A Victim Assistance Bill was drafted by Indian Society of Victimology in corroboration with the National Law School of Indian University, Bangalore and National Human Rights Commission in 1996. The Draft Bill was sent to the Ministry of Law and Justice and the Ministry of Home affairs to consider enacting a national law on victim assistance/compensation in India. However, no such legislative proposal was made by the Government for the purpose of enacting a separate victim law in India.

The 1985 UN Declaration, the ‘magna carta’ for victims, lays down the basis framework of principles of justice for victims of crime. The Declaration specially asks States to provide, by law, such rights as recognised thereunder, for victims of crime. Responding to the Declaration, some developed countries enacted victim laws and revamped their criminal justice by incorporating those rights in every stage of criminal proceedings. Illustrative of this legislative trend are the **Criminal Injuries Compensation Act, 1995** of U.K., the **Victims and Witnesses Protection Act, 1982** of U.S.A, the **Victims Rights and Restitution Act, 1999** of U.S.A., the **Victims of Crime Assistance Act, 1996** etc. These enactments aimed at providing increased participation and more substantive rights to victims of crime. They were introduced for reforming and reshaping the criminal justice system to give a better deal for victims, which may be considered for adoption in India with some suitable changes for effective execution.

has been charged and the expression “victim” includes his or her guardian or legal heir.

⁷¹ S.K.P. Srinivas, *Law Relating to Crimes Compensation* 318 (Orient Publishing Company, New Delhi, 1st edn., 2017).

It is a weakness of our jurisprudence that the victims of crime do not attract the attention of law. Indeed, victim reparation is still the vanishing point of our criminal law. This is a deficiency in our criminal justice system which must be rectified by the legislature.

Furthermore, Victim Impact Report and Victim Impact statement are presently used by the Courts merely to reckon the quantum of compensation and, therefore, serve a very limited purpose. But they may be effectively considered to be used in the sentencing process since the victim has no right to directly participate in the trial while hearing the offender by the Court.

Though the compensatory scheme is strengthened through the insertion of **Section 357A** in the Code of Criminal Procedure, the success level of the same is not very much inspiring. Therefore, it is the need of the hour that the legislature should come forward to take affirmative steps to give constitutional status to the victim compensation scheme. Indeed, the constitutionalisation of the victim compensation scheme would uphold the sanctity of the scheme and promote victim cordial criminal jurisprudence and build a responsive and remedial criminal justice system.