

# **Dimensions and Paradigms of Victim Compensation in Criminal Trials**

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## Introduction and Role of Victim in the Trial Process

*“Tears shed for the accused are traditional and ‘trendy’ but has the law none for the victim of crime, the unknown martyrs.”*

- Justice V.R. Krishna Iyer

The Criminal Justice System mainly consists of three parts – criminology, penology and victimology.

**Criminology** is the scientific study of crimes and the causes of it. The study investigates why a crime is committed and looks for preventive measures.

**Penology** is the study of penal action consequent to the commission of a crime. The criminal procedure that is set in motion after a crime is committed including trial, conviction and sentencing is studied in penology.

**Victimology**, a rather new concept, is the study of the suffering of a victim due to a crime. Victimology studies how justice should be provided to the ‘victim’ of an offence.

Now, we will be discussing a very important question. Who is a ‘victim?’ Section 2(wa) of the Code of Criminal Procedure defines a ‘victim’ as a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged, or the guardian or legal heir of such a person.

For every crime that is committed, there are at least three

victims – first the society, second the actual or primary victim and third the dependants of the victim.

Criminal law by its very nature tends to deal with those classes of wrongs that are extremely serious or grave. The harmfulness of conduct is to be judged in terms of its effect on valued interests, which may be individual interests or some form of collective interests.<sup>1</sup> In other words, it shocks the conscience of the public at large and they have a stake in the ramifications of the offence. This is why the State prosecutes on behalf of the victim.

Secondly, the very functional aspect of the criminal process has, over time, in the common law jurisdiction, become very accused-centric. It is to penalise the accused for the wrong committed, to ensure that this acts as a deterrent for future offenders. However, in this retributive approach to criminal law, the system loses sight of the *actual or primary victim and his or her dependants*.

Unlike in civil cases where the central function of the law is not censure or prevention but to provide a remedy to the victim for the invasion of protected interests, where usually damages and sometimes injunctive or other reliefs are awarded, the victim in a criminal case often has no avenue to protect his or her interests, unless the offence committed is also a civil wrong and a separate suit can be filed under civil law. This leaves these victims as an unprotected class who continue to suffer from the trauma and aftershocks of the incidents that they have been subjected to day after day, and can never resume their normal lives.

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<sup>1</sup> Andrew Ashworth, ‘Is Criminal Law a Lost Cause?’, 116 Law Quarterly Review 225 (2000)

## Decision to Prosecute

The victim although he or she is the person who is primarily affected, be it in terms of loss of life, limb, property, honour, dignity, etc., adopts a secondary role in the criminal process. The status of the victim in criminal proceedings in India is dealt with in a few provisions of the Criminal Procedure Code, which are too insufficient to be considered fair in dispensing equal justice under law as guaranteed under Article 14. He has little to no say in the investigation process, which is conducted by the Investigating Officer and also in the trial itself which is conducted by the State as the prosecution. A victim's role is limited to:

*One*, filing a private complaint under Section 200 of the Cr.P.C. read with Section 190(1)(c) and Section 156(3) before the Magistrate if the police does not register the FIR.

*Two*, due to an expansive interpretation of Section 301 read with Section 24(8), Cr.P.C., he can file an intervenor application and appoint a lawyer to assist the public prosecutor. However, this role too is secondary as has been reiterated by the Apex Court numerous times<sup>2</sup> and there cannot be a more active participation in the prosecution as Section 225 Cr.P.C., mandates that it should be conducted by the Public Prosecutor.

*Three*, by virtue of Section 372, Cr.P.C, the victim shall have a right to prefer an appeal against any order passed by the

Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. However, what is the use of filing the appeal when the trial itself has already been conducted by third parties and if the material collected by the investigation agency is not in accordance with law?

*Four*, even in terms of granting and cancellation of bail where the victim's safety and the sanctity of the investigation process is concerned, the rights of the victim are merely secondary. While Section 439(2) allows a victim to move the Court for cancellation of bail, the action thereon depends on the stand taken by the prosecution. Similarly, the prosecution can seek withdrawal at any time during trial without consulting the victim (Section 321 Cr. P.C.).

The victim only has certain protections under the Cr.P.C., in his or her capacity of a witness. Under Section 157, a woman is entitled to give a statement to a female officer in a safe place. The statements under Sections 161 and 164 can be recorded audio-visually. Further, special enactments like the POCSO Act (Protection of Children from Sexual Offences Act) also ensure that the victim never comes face to face with the accused, etc. However, even these do not reflect an active role to secure the outcomes that the victim wants and are merely procedural safeguards to protect the victim's interests. They also end up curtailing the victim's right to attend proceedings to a certain extent in some cases.

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<sup>2</sup> See *Shiv Kumar v. Hukam Chand and Anr* [(1999) 7 SCC 467]; *Dhariwal Industries Ltd. v. Kishore Wadhwani and Ors* [(2016) 10 SCC 378].

## Judicial Approach to Compensation

In *Nirmal Singh Kahilon v. State of Punjab*,<sup>3</sup> the Apex Court observed that the right to fair investigation and trial is applicable to the accused as well as the victim and such a right to a victim is provided under Article 21 of the Constitution of India. But the reality of the criminal process is that the victim is a forgotten party in the criminal justice system. The entire focus is on the offender, to protect his rights, to ensure fair trial and to protect him from custodial harassment, amongst other things. The resources of the State are diverted to protect the interests of the accused while the plight of the victim is often overlooked. This is not to say that the rights of an accused occupy a lower pedestal—of course, the presumption of innocence until proven guilty operates. However, the point that is being made is that the victim too should be given assistance from all possible quarters including the State.

In a series of judgments from 1979 onwards, the Supreme Court as well as the High Courts have made observations about the status of victims in the criminal process. In *Maru Ram v. Union of India*,<sup>4</sup> the Court observed that while considering the problem of penology, which is the study of penal action consequent to the crime committed, the Court should not overlook victimology, which is the study of the suffering of the victims who die, suffer or are maimed at the hands of criminals.

In *State of Gujarat v. High Court of Gujarat*,<sup>5</sup> the Court

observed that in an effort to look after and protect the human rights of the accused or the convict, the court cannot forget the victim or his family in case of his death or incapacitation because of the offence committed by the convict.

In the light of all these observations, what is being done to protect the interests of the victim and for their restitution?

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<sup>3</sup> (2009) 1 SCC 441.

<sup>4</sup> (1981) 1 SCC 107.

<sup>5</sup> (1998) 7 SCC 392.

## Current Legal Scheme

The victim may be awarded compensation either under general laws or under specific laws. For instance, whenever an accident takes place and a crime is committed under Sections 304-A/338/279 of the Indian Penal Code, the victim of the accident can approach the Motor Accidents Claims Tribunal and claim compensation under civil law. The method for quantification of compensation under such laws is systematic. Compensation may similarly be provided under the Railways Act, the Domestic Violence Act, the Workmen Compensation Act, the Protection of Human Rights Act, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and the Probation of Offenders Act. These special laws, however, provide for compensation under civil law.

The right of victim compensation is also well recognized under the Cr.P.C. However, earlier it was available only where the provision itself contained a monetary fine and the same was imposed. In this case, victim compensation was limited to the amount of fine actually realized. Section 357(3) authorizes the magistrate to impose a fine where a fine has not been imposed. However, this Section is invoked sparingly and inconsistently by the courts.

The 152nd Report of the Law Commission had recommended the introduction of Section 357-A prescribing inter alia that compensation should be awarded at the time of sentencing to the victims of crime amounting to Rs. 25,000/- in case of bodily injury, not resulting in death and Rs 1,00,000/- in case of death. Since the recommendation of the report had not been incorporated by the government, the 154th Report mandated

the incorporation of Section 357-A, which was finally inserted in the Cr.P.C in 2008. Sections 357-B and 357-C were inserted by the Criminal Law (Amendment) Act, 2013.

The law of victim compensation as it stands today has provisions relating to compensation of victims such as Sections 357, 357A, 357B, 357C, 358 and 359 of the Cr.P.C. It is now well settled by several judgments of the Supreme Court that the power of the courts to award compensation to victims under Section 357 is not *ancillary* to other sentences but, is in *addition* thereto, measuring thereby that the imposition of one does not preclude the other or warrant its reduction and that imposition of fine or grant of compensation to a great extent must depend upon relevant factors, apart from such fine or compensation being just and reasonable. In ***Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and Anr.***<sup>7</sup> the Court even favoured an inquiry albeit summary in nature, to determine the paying capacity of the offender.

Section 357 Cr.P.C. confers a duty on the court to apply its mind to the question of compensation in every criminal case. It necessarily follows that the Court must disclose that it has applied its mind to this question in every criminal case.

The court can award compensation to the complainant for which no limit is prescribed in Section 357, but in fixing the amount of compensation the court has to consider what would be the reasonable amount payable to the complainant. The compensation should be commensurate with the paying capacity of the accused, as also other facts and circumstances of the

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<sup>6</sup> See *Sarwan Singh and others v. State of Punjab* [(1978) 4 SCC 111]; *Balraj v. State of U.P* [(1994) 4 SCC 29]; *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and Anr* [(2007) 6 SCC 528].

<sup>7</sup> (2007) 6 SCC 528.

case, like the gravity of the offence, the needs of the victim's family, etc.

The option to award compensation under Section 357 without reference to pecuniary limits for imposing fine is available when the fine is not part of sentence imposed by Magistrate. While grant of compensation under Section 357 does not exclude the jurisdiction of civil courts, the amount paid is adjusted against the final amount awarded as payable in the suit. The reality however is that there are very few cases in which courts have imposed fines of more than Rs.5,000 or Rs.10,000 and that too in cases involving murder, rape, dacoity, etc. Even if the entire amount is disbursed, it would not help the victim and such paltry sums cannot be termed as compensation.

Further, in most cases the accused is himself not in a position to pay compensation and justice would fail if Section 357 were the only resort. This is where Section 357A comes into play and it is important that an adequate fund is created keeping in mind inflation and the value of the rupee.

## **State and Central Victim Compensation Funds**

In 2009, the Central Government gave directions to every state to prepare a scheme which has to be in agreement with the centre's scheme for victim compensation. The State Governments were directed to have a budgetary allocation for a victim compensation fund. The primary purpose of the scheme is to provide funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation under Section 357-A.

In 2015, the Central Government formulated the Central Victim Compensation Fund scheme to compensate victims. Every state has its own guidelines to determine the procedure for the same. Under the scheme, it is the court which orders that the victim who suffered loss needs to get compensated. In such a case, the District Legal Services Authority or the State Legal Services Authority, as the case may be, conducts an enquiry and decides the quantum of compensation to be awarded which is then disbursed.

This scheme enables victims to get compensated even when the accused is not convicted or the offender cannot be traced but the victim needs to be rehabilitated. However, the minimum amounts of compensation prescribed for various classes of offences are highly inadequate, with the highest bracket being that of acid attack and rape victims who are to be given upwards of Rs. 3 lakhs. These sums are too meagre and are highly disproportionate to the gravity of the offence and the sufferings of the victim.



In addition to the statutory provision now located in Section 357A of the Cr.P.C., which requires the creation of a fund for victim compensation, it can be argued that Article 41 of the Constitution also imposes this duty upon the State.

Article 41 reads as follows:

***“Right to work, to education and to public assistance in certain cases.*** – The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”

Unfortunate victims of crimes are certainly deserving of public assistance and fall under the residuary category of “undeserved want.” This provision must be used to create the fund more effectively.

Let us now look at the experiences and impact of some of these offences on victims.

## Impact on Certain Victims

### Sexual offences and trauma

Apart from the immediate and direct negative impact that sexual assault has in the form of injury, physical trauma or death and long term mental health effects, it also has associated social and economic costs. It results in a diminished quality of life in society, reduced prospects for marriage and an increased feeling of insecurity and self-blaming for the victim. Economic costs that are directly attributable to sexual assault involve medical treatment, social services, judicial services, counselling sessions, and in some cases education, employment and personal costs. These costs are magnified in cases of child sexual abuse, which leaves an indelible scar on the child’s life, affects the entire developmental process of the child and carries forward into adulthood in various forms. Very recently, in *Nipun Saxena v. Union of India & Ors*,<sup>8</sup> the Supreme Court approved of the Scheme on Victim Compensation for Survivors of Sexual Assault and Acid Attack, 2018 drafted by NALSA (National Legal Services Authority) and directed the government to modify it, such that it also covers victims of child sexual abuse.

### Acid attack

Acid attacks are one of the most horrific offences. Unfortunately, they are gendered offences with women being victims in almost all cases. Even if it does not result in death, apart

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<sup>8</sup> W.P. (C) No. 565 of 2012.

from causing severe burning of the face, which is most commonly targeted, it also melts bones, has a heavy risk of loss of eyesight and hearing, and causes fatal diseases like ulcers. Permanent marks are left on the face and body of the victim and sessions of plastic surgery costing upwards of Rs.10-15 lakhs are required. The victim can never resume her normal social life. Given the extremely competitive environment which places primacy on physical attractiveness, the disfiguration of the victim ensures that prospects of employment, marriage, and normal interactions with children and loved ones are completely lost. On the other hand the criminal enjoys free life on bail or is relieved after a small imprisonment and the conviction rate for these offences is at an abysmal rate of 15-20%. The sentencing too is only for three years unless the burns are considered severe. Even imprisoning the offender for life will not give back the victim what she has lost. There should be more focus on providing immediate and accurate medical help from the government to the victim. Compensation should be given to the victim as soon as possible, so that she can proceed with her treatment properly and measures should be taken for counselling, employment and rehabilitation.

### **Sole breadwinner**

If for instance, there is a murder victim who was the sole breadwinner of the family, what is to happen to his or her dependants? Apart from the loss of a dear family member due to such gruesome circumstances and the resultant emotional trauma, they are also bereft of their only avenue of subsistence. The case is no better if it is one of grievous hurt and assault leaving the victim with amputated limbs and unable to resume employment and normal life – the entire family is in dire straits.

### **Robbery/cyber-crimes**

If the property of the victim is lost in the crime, if a destitute man's hut is set on fire, if someone's bank account is emptied of their life's earnings due to hacking, their plight is unimaginable. Some say that theft which robs the person of their entire means of livelihood and lifestyle is even worse than murder as it destroys your life and inflicts continuous misery as opposed to snuffing it at once. If the police and investigative authorities fail to recover the lost or stolen goods, even imprisonment of the offender cannot return the victim to their earlier position. Often, the recovery is only partial. State compensation in certain states for payment of Rs.10,000-20,000 is hardly sufficient. The violation of the victim's rights, invasion of his dignity, and the actual losses incurred by him are all dolefully, not a matter of concern in the criminal process.

### **Matrimonial and other domestic violence cases**

The impact of physical, sexual and psychological violence can result in a range of negative and harmful effects on the health, well-being and outcomes in life of women and their children. Physical and sexual abuse can cause short term, long term and permanent injuries or conditions. Psychological abuse can lead to a variety of problems such as low self-esteem. It can result in disturbed patterns of eating and sleeping. It causes a range of mental health issues like a lack of confidence, depression, extreme anxiety, alcoholism and substance abuse. It can also drive a person to self-harm and suicide. The social and economic consequences of violence can include homelessness, loss or separation from family friends, isolation, loss of employment, debt and destitution. In a society which is still patriarchal, the victim suffers from great stigma and has lower prospects of re-marriage and finding love again. She



deserves to be compensated for all the trauma she has undergone and for having forsaken the best years of her life to a cycle of violence and victimisation. Currently, women can avail of maintenance under Section 125 of the Code of Criminal Procedure and certain provisions of the Domestic Violence Act. However, this is only to meet daily subsistence needs and does not compensate them. Guidelines are needed for the same.

### False prosecution and social stigma

Sometimes, in our criminal justice system, the accused or convict turns out to be the 'actual' victim due to the abuse of the process of law. If the prosecution is launched based on false prosecution and ultimately after trial, if the person is acquitted and the Trial Court finds that the case that was foisted is absolutely false, then the original accused is a victim. Due to lack of awareness in society, even after such an acquittal, the victim might be subjected to social ostracisation and may carry with him the stigma of having been an accused. Further, he has undergone mental and economic torture of having to undergo the entire trial process and needs to be compensated for the same. In such cases, Section 250 of the Cr.P.C., can be availed and compensation is to be levied on the complainant. However, it is a sad state of affairs where the Courts often do not exercise or invoke this power.

In the case of *Hardeep Singh v. State of Madhya Pradesh*,<sup>9</sup> the appellant who was running a coaching centre was arrested and his house was raided because he allegedly asked for money to leak question papers. Here, the Supreme Court upheld the High Court's decision to grant compensation and also invoked the right to speedy justice under Article 21 and increased the compensation from Rs. 70,000 to Rs. 2,00,000. However, it did

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<sup>9</sup> (2012) 1 SCC 748.

not explicitly use Section 250 of the Cr.P.C. to do so, and even such cases are few and far in between.

Section 211 of the Indian Penal Code also provides for the punishment of the person wrongly prosecuting a person, who, by virtue of a clear case of false prosecution becomes the victim. The law also grants such a person liberty to file for tortious compensation. Recently, the Supreme Court in a remarkable verdict in the *ISRO Spy case*,<sup>10</sup> of Mr. Nambi Narayan, granted rupees 50 lakhs to him as compensation for false prosecution and torture in police custody. However, in another recent judgment of the Supreme Court in the *Akshardam Blast case*,<sup>11</sup> compensation to the acquitted accused persons was turned down by the court, which verbally observed that it would create a 'dangerous precedent' and held that there was liberty to pursue for compensation under the appropriate forum.

### Violation of Fundamental Rights

There are many cases where the fundamental rights of the citizens are violated. This is a failure on part of the State to secure to its citizens their basic rights and a breach of the trust they have reposed in the government. *Rudul Shah v. State of Bihar*<sup>12</sup> laid down the compensatory jurisprudence for the violation of fundamental rights under the Constitution. It is noteworthy in this context that there is no express provision for awarding such compensation in the text of the Indian Consti-

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<sup>10</sup> *S. Nambi Narayan v. Siby Mathew and Ors. Etc.* Civil Appeal Nos. 6637-6638 of 2018.

<sup>11</sup> *Adambhai Sulemanbhai Ajmeri & Ors v. State of Gujarat and Ors. W.P.* (Criminal) No. 25 of 2015.

<sup>12</sup> (1983) 4 SCC 141.

tution, and that this judgment was on the basis of the court's interpretation of the extent of its remedial powers. This was the first case since the inception of the Supreme Court that awarded monetary compensation to a person for the violation of his fundamental rights guaranteed under the Constitution. The grant of such monetary compensation was in addition to and not to the exclusion of the right of the aggrieved person to bring an action for damages in civil law or in tort. Following this case, the Supreme Court awarded compensation in several cases. In the subsequent early cases in which this remedy was considered, the court held that compensation would be awarded only in 'appropriate cases,' which seemed to primarily involve life and liberty rights and were mostly cases relating to illegal detention and unlawful deaths. Nonetheless, in later cases, it became clear that the scope was significantly widened.

The concept of reparation, in these circumstances, should be understood by taking recourse to the principle of Constitutional tort. A human being cries for justice when he feels that an insensible act has crucified his self-respect. This warrants grant of compensation under the public law remedy. Suitable compensation has to be awarded in appropriate cases to compensate the suffering, anxiety and the treatment by which the quintessence of life and liberty under Article 21 withers away.

## Other Jurisdictions and Recommendations

### United Nations Declaration

In 1985, the United Nations adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The Declaration recognised four types of rights and entitlements of victims of crime. They are:

- a) Access to justice and fair treatment which includes prompt redress, right to be informed of benefits and entitlements under law, right to necessary support services throughout the proceedings, and right to protection of privacy and safety.
- b) Right to restitution, return of property lost or payment for any harm or loss suffered as a result of the crime.
- c) Compensation when compensation is not fully available from the offender or other sources. The State should provide it at least in violent crimes that result in serious bodily injury, for which a national fund should be established.
- d) Personal assistance and support services, which includes material, medical, psychological, and social assistance through governmental, voluntary, and community-based mechanisms.

The provision relating to restitution reads as follows:

*"The offenders or third parties responsible for their*

*behaviour should where appropriate, make fair restitution to victims, their families or dependents. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of victimisation, the provision of services and restoration of rights. The government should review the practices, resolutions and laws to consider restitution as an available sentencing option in criminal cases in addition to criminal sanctions."*

The UN further clarifies the burden on the State in the provision relating to compensation which reads as follows:

*"When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:*

- (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;*
- (b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.*

*The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm."*

## **United Kingdom**

The United Kingdom enacted the Criminal Injuries Compensation Act in 1995. In 2001, in a report on "Criminal Justice:

The Way Ahead," the Home Department found *"that many victims felt that the rights of the accused of a crime take precedence over theirs in criminal proceedings."* Every time a case is discharged or acquitted or the verdict is perceived to be unjust, a victim's suffering is made worse. During the long procedure of investigation and trial, victims are not kept properly informed or provided with a sense of security. Too often they are expected to turn up at court for cases that are then adjourned, or are subjected to unnecessarily stressful courtroom experiences.

Crime can leave victims physically injured, emotionally traumatised, with potentially long lasting psychological trauma, all of which can be compounded by severe financial difficulties, observed the U.K. report. The agencies with which victims come into contact, particularly during the period after the crime, do not always understand and respond effectively to their needs.

The U.K. report, therefore, recommended the following measures to balance the system of justice in that country:

- a) Legislate to entitle victims to information about release and management of the offenders, and progress of their cases.
- b) Enable victims to submit a "victim personal statement" to the courts setting out the effect of the crime on their lives.
- c) Introduce measures to protect vulnerable victims/witnesses such as screens, video evidence, etc.
- d) Establish a victim's commissioner (ombudsman).
- e) Legislate to produce a Victim's Code of Practice setting out what protection, practical support and information victims have a right to expect from criminal justice agencies.

## United States of America

The US has enacted the Victim and Witness Protection Act, 1982, which authorises the Federal Court to award restitution by means of monetary compensation as part of conviction and sentence. The Act provides:

*“If the Court does not order restitution or orders only the partial restitution, the Court shall include in the statement the reasons thereof.”*

Thus, the Courts in the US have to record reasons for not ordering restitution, which implies that they have to consider the compensation aspect in each and every case of conviction. There is an enquiry after conviction which is called the “Presentation Investigation” to find out how much compensation has to be paid. This is to be completed within five weeks and then the compensation is disbursed.

## France

In France all those who suffer injuries on account of crime are entitled to become parties to the proceedings from the investigation stage itself. They can assist investigation to proceed on proper lines and move the court for appropriate directions when the investigation gets delayed or distorted for whatever reasons. They may suggest questions to the court to be put to witnesses produced in court. They may conduct the proceedings if the Public Prosecutor does not show due diligence. They can supplement the evidence adduced by the Prosecution and put forth their own arguments. They may help the court in the matter of deciding the grant or cancellation of bail. They may adduce evidence in the matter of loss, pain, and suffering to decide on their entitlement to interim relief and compensation by way of restitution. Wrongful attempts

to withdraw or close the prosecution due to extraneous factors can be resisted.

## The Malimath Committee Report

The Malimath Committee appointed by the Government of India (2003) made a series of recommendations to put the victim back at the centre of criminal proceedings through a series of steps designed to empower him and the court. These include:

- i. The victim, and if he is dead, his legal representative shall have the right to be impleaded as a party in every criminal proceeding where the offence is punishable with seven years imprisonment or more. In select cases to be notified by Government, this right may even be extended to recognised voluntary organisations as well.
- ii. The victim has a right to be represented by an advocate of his choice; an advocate shall be provided at the cost of the state if the victim is not in a position to afford a lawyer.
- iii. The victim's right to participate in criminal trial shall, inter alia, include the right to provide evidence, to put questions to witnesses with the leave of the court, to be informed of the status of investigation, to move court to ensure proper investigation, to be heard on issues relating to bail and withdrawal of prosecution, to advance argument after the prosecutor has submitted his arguments, and to participate in settlements of compoundable offences.
- iv. The victim shall have a right to prefer an appeal against any adverse order passed by the court acquitting the

accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation.

- v. Legal services could include psychiatric and medical help, interim compensation, and protection against secondary victimisation.
- vi. A law for victim compensation is to be made by Parliament, which will provide for the creation of a victim compensation fund to be administered possibly by the Legal Services Authority. The law should provide for the scale of compensation in different offences for the guidance of the court.

## Recapping The Trend So Far

In ***Ramesh Kumar v. Ram Kumar***<sup>13</sup> the trial court convicted and sentenced the accused to undergo imprisonment for life for murder. The matter came up before the High Court and the High Court reduced the gravity of the offence by convicting the accused under Section 304 Part II and imposing a sentence of two years. As compensation, three acres of land was directed to be given by the accused to the victim. More importantly, in that matter, the reduction of sentence was not on merits but because of the compensation granted to the victim. When the matter came before the Supreme Court, the order of the High Court was set aside and said that if the judgment of the High Court is accepted it would be a mockery of the entire criminal justice system. It reiterated that the power of the court to award compensation was not in lieu of the sentence imposed, but was in addition thereof.

In ***Ankush Shivaji Gaikwad v. State of Maharashtra***,<sup>14</sup> Justice T.S. Thakur delivered a very detailed judgment on the question of victim compensation. Referring to a plethora of sources, the court held that it is the duty of the court to consider payment of compensation in each and every case and the court should, drawing from the U.S. experience, record reasons for not granting compensation. As the court succinctly stated:

*“To sum up: 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*

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<sup>13</sup> (1984) 3 SCC 90.

<sup>14</sup> (2013) 6 SCC 770.



*its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.”*

There has been a positive trend in that courts are now (more often than before, but still not often enough) using Sections 357 and 357-A to grant compensation to the victim.

In the case of **Naresh v. State of Uttarakhand**,<sup>15</sup> four people had allegedly attacked a man with the axe. While the Supreme Court confirmed conviction of three accused for the offences of attempted murder and grievous hurt, and acquitted one person, it also enhanced the fine of Rs. 7000 imposed by the High Court to Rs. 75,000 per person (a total of Rs. 2,25,000) to compensate the victim for the injuries he had suffered.

The Supreme Court rendered a remarkably progressive judgment in **Vikas Yadav v. State of Uttar Pradesh**,<sup>16</sup> where

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<sup>15</sup> (2018) 6 SCC 404.

<sup>16</sup> (2016) 9 SCC 541.

the case involved honour killing by three brothers of the man who intended to marry their sister. The Supreme Court upheld the judgment of the High Court which had convicted them and imposed a heavy fine of rupees 54 lakhs each as compensation under Section 357. The court stated that:

*“The High Court has already given the reasons and also adverted to the paying capacities. The concept of victim compensation cannot be marginalised. Adequate compensation is required to be granted. The High Court has considered all the aspects and enhanced the fine, determined the compensation and prescribed the default clause. We are not inclined to interfere with the same.”*

Similarly, the courts have started to avail of Section 357-A although the number of cases under this are very few. While this is understandable since the provision came into effect only in 2013, a ‘case by section’ search on SCC Online reflects only 10 cases before the Supreme Court and 7 cases before various High Courts revealing the extent of underutilisation. Yet, here too, one can see a ray of hope in recent judgments.

In **Z v. State of Bihar**,<sup>17</sup> Z a victim of rape was awarded Rs.3,00,000 under the victim compensation scheme. Further, since the medical authorities unduly delayed termination of pregnancy and the term crossed over 20 weeks thereby making it legally impermissible to abort under the Medical Termination of Pregnancy Act, she was awarded Rs. 10 lakhs under Section 357-A. The Court also gave directions to deposit the money in a fixed deposit so that it may be used to secure the future of the child born.

One of the trends that can be seen is that courts are quick to award compensation in cases of grievous bodily harm, includ-

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<sup>17</sup> (2018) 11 SCC 572.



ing murder, acid attacks, and in cases of rape. While this is a trend that must continue, the other classes of victims must not be overlooked as they too deserve their rights to be protected and for them to be adequately compensated so that their reintegration into society is better facilitated.

## **Conclusion**

Therefore, I conclude by noting that victims are being ignored for most part of the criminal process, without involving them in it and having a blind eye towards these victims especially when it comes to awarding adequate compensation. They are being further victimised by the system which can be considered very 'accused-centric.' This view needs to be revisited and changes have to be and can be brought to it.

Jai Hind.