

Victims of Crime in India: The Quest of Judiciary for Just Compensation

“Just as medicine treats all patients and all diseases, just as criminology concerns itself with all criminals and all forms of crime, so Victimology must concern itself with all victims and all aspects of victimity in which society takes an interest?”

-Mendelson B. (1976)¹

Introduction

The world is full of crime and criminals, tragedy and violence. Crime is a social phenomenon. No society primitive or modern, no country whether under developed or developing or developed is free from its clutches. The by-product of the crime i.e. victim is equally bound to emerge. The focus has mainly and always been on criminal and crime, none on victim. So, the forgotten man in the legal world and society happens to be the "victim" for whose plight remedy we have the whole system.

Criminal Law has always discouraged the acts or omissions which in general can affect right *in rem* and violators have always been punished with strict sanctions but the crime rate is not falling and State is in regular quest to preserve social solidarity and peace in society. The initial focus of criminologists were only on the aspect of punishment but the focus started shifting when they encountered with the fact that the person who is victim of crime is getting nothing out of the whole process of criminal justice system or is getting a so called satisfaction by seeing the offender punished. Therefore jurists, penologist etc. in all countries started giving their full attention to the cause of victim in the form of compensation and hence the whole debate started about ways, means and extent of compensation.²

The basic aim of administration of justice is to do justice as per law. It is through effective jurisprudence, the rights of victims can be protected otherwise, the victim remains meek viewer in the whole process of justice and the offender enjoys the facilities of food and shelter in jail.

Meaning & Definition of Victim, Victims of Crime

The word “victim” arises from the Latin term *victima*,³ used to describe animals sacrificed in religious ceremonies.⁴ The concept of victim dates back to ancient cultures and

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¹ B. Mendelson, “Victimology and Contemporary Society's Trends” *Victimology* 1 (1976), pp. 8-28

² Abhishek Anand, “ Compensation to the Victim of Crime: Assessing Legislative Frame Work and Role of Indian Courts” Available at <http://www.legalserviceindia.com/articles/pun.htm>

³ Webster's Third New International Dictionary Unabridged, 2550 (Merriam- Webster, eds. 1968).

⁴ Oxford Latin Dictionary 2057 (1982) (defining “*victima*” as “[a]n animal offered in sacrifice”).

civilizations such as Hebrews. Its original meaning was rooted in the idea of a sacrifice or scape goat. Merriam Webster dictionary defines victim as one that is acted upon and usually adversely affected by a force agent. Oxford dictionary defines the victim as a person or thing injured or destroyed in pursuit of an object, in gratification of a passion etc. or as a result of event or circumstances.⁵

American Heritage Dictionary defines “victim” as (a) someone who is put to death or subjected to torture or suffering by another; (b) execution or casting out a person to satisfy a deity or hierarchy; (c) victims of war; (d) person who is tricked, swindled or taken advantage of; and (e) a person who suffers injury, loss, or death as a result of a voluntary undertaking.⁶

"Victim" has been defined under ICC (Inter-national Criminal Court) statute as, Natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the ICC.⁷

The California Supreme Court in an 1860 opinion, provide the first detailed discussion of the meaning of the word “victim” by an American court.⁸ The word *victim*, in the connection in which it appears, is an unguarded expression, calculated, though doubtless unintentionally, to create prejudice against the accused. It seems to assume that the deceased was wrongfully killed, when the very issue was as to the character of the killing. When the deceased is referred to as “a victim,” the impression is naturally created that some unlawful power or dominion had been exerted over his person.

Indian legislature has not bothered to define "Victims of Crime" under any law however, they attempted to define the term victim⁹ and probably the Indian judiciary is also on the same footing. Concern was expressed for the plight of the victims of crime by Justice V. R. Krishna Iyer when he commented: “The criminal law in India is not victim oriented and the suffering of the victim, often immeasurable is entirely overlooked in misplaced sympathy

⁵ “Victim,” Oxford English Dictionary Vol. XIX, 607 (2d ed. 1991).

⁶ Ashish Goel and Shilpa Goel, “Compensatory Jurisprudence for Victims of Crime in India: A Comparative Analysis of the Legislative and Judicial Precedents in the Backdrop of International Norms and Standards”. Crime, Punishment and the Law-An International Journal (2009) Vol.2. p.2 Available at <http://ssrn.com/abstract=1779186>

⁷ It includes "legal entities that have sustained direct harm to any of their property, which is dedicated to religion, education, art or science or charitable purposes and to their historic monuments, hospitals and other places and objects for humanitarian purposes.

⁸ *People v. Williams* 17 Cal. 142, 147 (1860).

⁹ Section 2 (wa) “victim” means 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 and the expression "victim" includes his or her guardian or legal heir; inserted in the Code of Criminal Procedure (Amendment) Act, 2008 No. 5 of 2009[7th January, 2009.]

for the criminal. Though our modern criminal law is designed to punish as well as reform the criminals, yet it overlooks the by-product of crime i.e. the victims”¹⁰

The etymological meaning of phrase suggests that it would mean or will encompass:¹¹

1. Anyone suffering physical, emotional or financial harm as a direct result of a crime.
2. Spouses and children of the person who has suffered.
3. Parents, foster parents, siblings, guardians or other custodians of minor victims, mentally or physically incapacitated victims, or victims of homicide.

In this regard reliance can be placed upon United Nations General Assembly Declaration of Basic Principles of Justice for Victim and Abuse of Power adopted in November 1985, which through Article 1 and Article 2 gives exhaustive definition of the phrase:¹² However there is no scientific and precise definition of the term victim has yet been found.

Notion and Rationalization of Compensation

The provision of compensation which is being frequently used by courts of different countries and which is considered as a new modern phenomenon is not correct but awarding compensation to victims had a long history. Reparation or compensation as a form of punishment is found to be recognized from ancient time in India.¹³

The concept of compensation was more developed sense than the present. *Manu* clearly says that: If limb is injured, a wound is caused or blood flows, the assailant shall be

¹⁰ V. R. Krishna Iyer: Access to Justice- A case of Basic change (1991) p.14

¹¹ Abhishek Anand, “Compensation to the Victim of Crime: Assessing Legislative Frame Work and Role of Indian Courts” Available at <http://www.legalserviceindia.com/articles/pun.htm>

¹² Article-1 "Victim" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

Article- 2 A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

¹³ In ancient Hindu law, during *Sutra* period, awarding of compensation was treated as a royal right. It shows that the victim compensation was never an alien concept in the justice delivery systems of the country. The edifice of the law in our present day legal system relating to the victim compensation is provisions contained in the Criminal Procedure Code, 1973 and various judgments of the Hon'ble Supreme Court. The question that arises for consideration is that despite having laws for victim compensation are these laws being satisfactorily used by those on who lies the duty of the execution of these laws and to give beneficial effects to it. Answer is very infrequently. The reasons are many. See “Law Relating to Victim Compensation”.<http://indianlawwatch.com/practice/lawrelatingtovictimcompensation/>

made to pay the expense of the cure or the whole.¹⁴ He further says that: He who damages the goods of another, be it intentionally or unintentionally, shall give to the owner a kind of fine equal to damage.¹⁵ The quotes regarding the same can be found even in the works of *Brihaspati*.¹⁶ This is in brief the law relating to compensation to the victim of crime that even existed in ancient civilization of east as well as west. As far as tracing of gradual evolution of the concept is concern the whole era till mid of 1900.¹⁷

With modern concepts creating a distinction between civil and criminal law in which civil law provides for remedies to award compensation for private wrongs and the criminal law takes care of punishing the wrong doer, the legal position that emerged till recent times was that criminal law need not concern itself with compensation to the victims since compensation was a civil remedy that fell within the domain of the civil Courts.

This conventional position has in recent times undergone a notable sea change, as societies over the world have increasingly felt that victims of the crimes were being neglected by the legislatures and the Courts alike.¹⁸ Legislations have, therefore, been introduced in many countries including Canada,¹⁹ Australia,²⁰ England,²¹ New Zealand,²² Northern Ireland²³ and in certain States of USA as for example California,²⁴ Massachusetts,²⁵ New

¹⁴ Chapter VIII, Verse 287 of Code of Manu.

¹⁵ Verse 288.

¹⁶ *Supra Note*, 11 p.1

¹⁷ Abhishek Anand, "Compensation to the Victim of Crime: Assessing Legislative Frame Work and Role of Indian Courts" Available at <http://www.legalserviceindia.com/articles/pun.htm>

¹⁸ Internationally, the UN General Assembly recognized the right of victims of crimes to receive compensation by passing a resolution titled '*Declaration on Basic Principles of Justice for Victims and Abuse of Power, 1985*'. The UN General Assembly passed a resolution titled *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005* which deals with the rights of victims of international crimes and human rights violations

¹⁹ The Victims of Crime Act, 1997

²⁰ Each Australian state and territory has developed a scheme for the financial (and other) assistance of victims of crime. The schemes are set out in the following legislation: Australian Capital Territory: Victims of Crime (Financial Assistance) Act 1983; New South Wales: Victims Rights and Support Act 2013; Queensland: Victims of Crime Assistance Act 2009; South Australia: Victims of Crime Act 2001; Tasmania: Victims of Crime Assistance Act 1976; Victoria: Victims of Crime Assistance Act 1996; Western Australia: Criminal Injuries Compensation Act, 2003. There is also a recent Commonwealth scheme established by the Social Security Amendment (Supporting Australian Victims of Terrorism Overseas) Act 2012, which provides financial assistance to Australians who are harmed in an overseas terrorist act and Australians whose family members have died in an overseas terrorist act.

²¹ State compensation for victims of crimes of violence committed in England, Scotland or Wales is currently detailed in the Criminal Injuries Compensation Scheme 2012

²² See New Zealand Public Act No. 134 of 1963

²³ See (Northern Ireland) Criminal Injuries to persons (Compensation) Act, 1968 (16 and 17 Eliz. 2 c. 9).

²⁴ Cal. Pen. Code. Art. 13.000 (1966), Cal. Welf. and Insnt's Code art. 11211(1966)

²⁵ Massachusetts General Laws, (1968), Ch. 258A

York,²⁶ South Korea,²⁷ Taiwan,²⁸ providing for restitution/reparation by Courts administering criminal justice. Basically two types of rights are recognized in many jurisdictions particularly in continental countries in respect of victims of crime, namely,²⁹ the victim's right to participate in criminal proceedings³⁰ and *secondly*, the right to seek and receive compensation from the criminal court for injuries suffered as well as appropriate interim reliefs³¹ in the course of proceedings.

Judicial Quest for Just Compensation

It was a compensation which distinguishes the civil law and criminal law. The very goal of the civil law system is to provide compensation for private wrongs but whereas the system of criminal law aims at punishing the persons whose behavior is morally culpable.³² It means that purpose of civil law is compensation and the purpose of criminal justice is punishing the wrongdoer. Now this very difference between civil and criminal law has been diluted and compensation is being awarded as a matter of right not in criminal law but also in constitutional law, environmental law and for violation of human rights etc.

The victim is kept aside and left at his own fortune without proper remedies. In criminal law, the phrase "a criminal must pay his debt to society" is often used, and consequently compensation to the victim is not awarded. Currently, there is a movement

²⁶ New York Executive Laws, section 620-635, 1967 Suppl.

²⁷ The legal framework for the National Compensation Scheme is set out in the legislations in South Korea. The highest law in South Korea, the Constitution declares that the state has obligation to compensate victims of crime. In order to implement such obligation of the state, legislative bodies of South Korea promulgated rules, statutes, regulations and enforcement orders. The following three legislations set forth procedures and standards of the crime victim compensation system - (1) Crime Victim Protection Act [No. 12187, revised on January 7, 2014]; (2) Enforcement Decree of the Crime Victim Protection Act [Presidential Decree No. 25050, revised on December 30, 2013]; and (3) Enforcement Rules of the Crime Victim Protection Act [Legal Decree No. 789, revised on May 28, 2013].

²⁸ Taiwan enacted the Crime Victim Protection Act in 1998, which became effective on 1 October the same year. It has been amended four times since, and the latest version was promulgated on 22 May 2013, which became effective on 1 June of the same year.

²⁹ See Government of India Report: *Committee on Reforms of Criminal Justice System* (Ministry of Home Affairs, March, 2003) p. 76

³⁰ Such as right to be impleaded, right to know, right to be heard, right to assist the court in the pursuit of truth, right to appeal, right to compromise, if the offence is compoundable, right to medical assistance etc.

³¹ In *Bodhisattwa Gautam v. Subhra Chakraborty* (1996) 1 SCC 490, the Supreme Court held that the Court has the right to award interim compensation and the jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the Courts trying the offence.

³² Hall, *Objectives of Civil and Criminal Laws* 1943; 13:753. Quoted by Rekha Rai, "Right of victim for compensation in India: A historical background" *International Journal of Law*, ISSN: 2455-2194, RJIF 5.12 Volume 2; Issue 4; July 2016; www.lawresearchjournal.com

afoot in several countries (including our own) to reexamine the problem of compensation or restitution to the victim.³³

In an orderly society citizens have right to assume complete safety in public life. If such public life safety is infringed the state must compensate the sufferers. This is inescapable liability of the state. Thus where rape takes place, it questions the law and order of the state entitling the sufferer to get compensation from the state. The compensation between criminal law and constitutional law is apparent yet disputable. Compensation under constitution is provided for violation of fundamental rights either by the state or by its instrumentalities in excess of their powers. The compensation for not maintaining law and order resulting in looting, death, loss or injury is example of direct violation of fundamental rights providing eligibility to claim compensation.³⁴ Apart from constitutional claims, state responsibility is also fixed by public criminal law. Criminal Procedure Code, 1973 addresses³⁵ such claims in India. Section 357-A obligates on every state to prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.³⁶

In 2008, the Government introduced major amendments to the Criminal Procedure Code, in order to strengthen India's criminal justice system.³⁷ The amendment for the first time made an attempt to define the term "victim"³⁸ and revamp the obsolete laws related to provision of compensation to victims.

In *Laxmi v. Union of India and others*³⁹ this Court observed, Section 357-A came to be inserted in the Code of Criminal Procedure, 1973 by Act 5 of 2009 *w.e.f.* 31-12-2009. *Inter alia*, this section provides for preparation of a scheme for providing funds for the

³³ Dr. Preeti Misra & Dr. Alok Chantia, "Compensatory Jurisprudence in India with Special Reference to Dispensation of Justice to the Victims of Rape: A Critical Appraisal" *Indian Journal of Human Rights Studies*, Vol. I Issue Jan-Feb 2011.

³⁴ In *Rudal Saha* 1983 SCC (4) 141 For the illegal detention of a person in jail for 14 years the supreme court has awarded Rs. 30,000 as interim compensation leaving the person to raise the claim for adequate compensation appropriate courts. In *Sebastian M. Hongray v. Union of India & Ors.* (11), [1984] 3 S.C.R. 544, in such a writ petition, exemplary costs were awarded on failure of the detaining authority to produce the missing persons, on the conclusion that they were not alive and had met an unnatural death. In *Bhim Singh v. State of J&K and Others* [1985] 4 S.C.C. 677, illegal detention in police custody of the petitioner *Bhim Singh* was held to constitute violation of his rights under Articles 21 and 22(2) and this Court exercising its power to award compensation under Article 32 directed the State to pay monetary compensation to the petitioner for violation of his constitutional right by way of exemplary costs or otherwise.

³⁵ Section 357 sheds compensatory responsibility on the offenders, section 357- A shifts this responsibility on the state, whereas, newly introduced section 357-B guarantees compensatory claims ensured by the State.

³⁶ The Criminal Procedure Code, 1973

³⁷ The Amendments were notified in December 2009.

³⁸ Section 2 (wa) inserted in the Code of Criminal Procedure (Amendment) Act, 2008 No. 5 Of 2009[7th January, 2009.]

³⁹ (2014) 4 SCC 427

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.

Recent amendments in Criminal Procedure Code subscribe to pay compensation to the victim of the crime, or otherwise make amends by repairing the damage done by the offence. Therefore, culprits must be asked to restore the victims to the possible extent.⁴⁰ However, legislative framework regarding victim compensation 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.⁴¹ Despite the absence of any special legislation to render justice to victims in India, the judiciary has taken a proactive role and resorted to affirmative action to protect the rights of victims of crime and abuse of power. The court has adopted the concept of restorative justice and awarded compensation or restitution or enhanced the amount of compensation to victims, beginning from the 1980's.⁴² Some of the important judgments of the courts can be considered in this regard.

In *Prabhu Prasad Sah v. State of Bihar*⁴³ where the Hon'ble court not only uphold the conviction of 15 years old boy (actually at the time of commission of crime the accused was of 15 years) but also observed that although requirements of social justice demands the imposition of heavy fine but taking in to consideration the condition of the accuse awarded fine of Rs 3000 to be paid by him to the children of the deceased.

It has been observed by Justice Krishna Iyer in *Maru Ram & Ors. v. Union of India and Ors.*⁴⁴ '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. Victimology must find fulfillment ... not through barbarity but by compulsory recoument by the wrong doer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn.'

⁴⁰ The Criminal Laws [Amendment] Act, 2013.

⁴¹ Vibhute K. I., "Justice to Victims of Crime: Emerging Trends and Legislative Models in India" 370, in *Criminal Justice: A human Rights Perspective of the Criminal Justice Process in India* (2004).

⁴² *Sukhdev Singh v. State of Punjab* (1982 SCC (Cr) 467), *Balraj v. State of U. P.* (1994 SCC (Cr) 823), *Giani Ram v. State of Haryana* (AIR 1995 SC 2452), *Baldev Singh v. State of Punjab* (AIR 1996 SC 372).

⁴³ (1976) 4 SCC 289

⁴⁴ (1981) 1 SCC 107

Further, in the land mark case of *Sarwan Sing v. State of Punjab*⁴⁵ where supreme court not only retreated its previous stand point but also laid down, in exhaustive manner, that what all should be taken in to account while imposing fine or compensation.⁴⁶

As early as 1983, the Supreme Court recognized the need for state compensation in cases of abuse of power by the State machinery. In the landmark case of *Rudul Sah v. State of Bihar*⁴⁷ the Supreme Court ordered the Government of Bihar to pay to *Rudul Sah* a further sum of Rs.30, 000 as compensation, which according to the court was of a “palliative nature”, in addition to a sum of Rs.5000, in a case of illegal incarceration of the victim for long years.

In *Bodhisattwa Gautam v. Subhra Chakraborty*⁴⁸ the Supreme Court held that if the court trying an offence of rape has jurisdiction to award compensation at the final stage, the Court also has the right to award interim compensation. The court, having satisfied the prima facie culpability of the accused, ordered him to pay a sum of Rs.1000 every month to the victim as interim compensation along with arrears of compensation from the date of the complaint. It is a landmark case in which the Supreme Court issued a set of guidelines to help indigenous rape victims who cannot afford legal, medical and psychological services, in accordance with the Principles of UN Declaration of Justice for Victims of Crime and Abuse of Power, 1985.

Similarly in *Saheli, a Women’s Resources Centre through Mrs. Nalini Bhanot v. Commissioner of Police, Delhi Police*⁴⁹ the Court awarded a sum of Rs.75, 000 as state compensation to the victim’s mother, holding that the victim died due to beating by the police.⁵⁰

In another landmark case of *D. K. Basu v. State of West Bengal*⁵¹ the Supreme Court held that state compensation is mandatory in cases of abuse of power and said that “To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial

⁴⁵ (1978) 4 SCC 111

⁴⁶ The Court said that in awarding compensation it was necessary for the Court to decide whether the case was 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. The Court said that the purpose would not be served if the accused was not able to pay the fine or compensation for imposing a default sentence for non-payment of fine would not achieve the object.

⁴⁷ AIR 1983 SC 1086

⁴⁸ AIR 1996 SC 922

⁴⁹ AIR 1990 SC 513

⁵⁰ The State was held liable to pay compensation payable to the mother of the deceased who died as a result of beating and assault by the police. However, the principle indicated therein was that the State is responsible for the tortious acts of its employees.

⁵¹ AIR 1997 SC 610

conscience". In the case of *Balraj Singh v State of U.P.*⁵² stated the same point as discussed above but in most appropriate word by saying that the power to award compensation is not ancillary to the other sentence but in addition thereto.

In *Nilabati Behera v. State of Orissa*⁵³, the Supreme Court observed:

"... it is sufficient to say that the decision of this Court in [*Kasturi Lal Ralia Ram Jain v. State of U.P.* AIR 1965 SC 1039] upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation."

If the instrumentalities of the state like police use their excess powers or become privy to the crime, the liability of the state is established vicariously for compensation, though the state would be free to get reimbursed from the errant officer.⁵⁴

The Supreme Court has recently directed the eastern Indian Odisha State government to provide additional compensation to victims of anti-Christian riots of 2008.⁵⁵ The two-judge bench on 2nd August, called the compensation granted to victims of communal violence in Odisha's Kandhamal district "inadequate."⁵⁶

⁵² (1994) 4 SCC 29

⁵³ AIR 1993 SC 1960

⁵⁴ In *Nilabati Behera Alias Lalit v. State of Orissa and Ors.* 1993 AIR 1960, the court observed that "[t]he State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law through appropriate proceedings." In *Saheli* [1990] 1 S.C.C. 422, the State was held liable to pay compensation payable to the mother of the deceased who died as a result of beating and assault by the police. However, the principle indicated therein was that the State is responsible for the tortious acts of its employees. In *State of Maharashtra and Others v. Ravikant S. Patil* [1991] 2 S.C.C. 373, the award of compensation by the High Court for violation of the fundamental right under Article 21 of an under trial prisoner, who was handcuffed and taken through the streets in a procession by the police during investigation, was upheld.

⁵⁵ Available at <http://www.ucanews.com/news/topcourtbacksadditionalodishacomensationclaim/76752>

⁵⁶ The judges were delivering a ruling on a petition filed by retired Archbishop Raphael Cheenath of Cuttack-Bhubaneswar. The ruling however, did not set down how much extra the claimants should get. A lower court earlier awarded 50,000 rupees (US\$746) in compensation to those who lost their homes and 500,000 rupees to families whose relatives were killed. In his petition, the archbishop asked the court for 1.5 million rupees for the families of those killed and 400,000 rupees for damaged houses. "The Supreme Court has recognized the need of providing adequate compensation to the victims," said Father Ajay Singh, who has been working for the rights of the victims.

In *Parivartan Kendra v. Union of India and Others*⁵⁷ the Supreme Court awarded ten lacs compensation to the duo who suffered acid attack. The court itself clarified that Rs. 3,00,000/ compensation fixed in the earlier case is the minimum and there is nothing in that case or in any schemes framed by the states which binds the state or court to award more than that in peculiar cases and circumstances.

The recent pronouncement of Supreme Court in *Ankush Shivaji Gaikwad v. State of Maharashtra*.⁵⁸ No words can better summarize than that the court in *Ward v. James*⁵⁹

"[a]lthough you cannot give a man so gravely injured much for his 'lost years', you can, however, compensate him for his loss during his shortened span, that is, during his expected 'years of survival'. You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to a back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet judges and juries have to do the best they can and give him what they think is fair. No wonder they find it well-nigh insoluble. They are being asked to calculate the incalculable..."

Recently, the Court in *Ravada Sasikala v. State of Andhra Pradesh & Anr.*⁶⁰ directed that the acid attack victims shall be paid compensation of at least Rs 3 lakhs by the State Government/Union Territory concerned as the aftercare and rehabilitation cost. Of this amount, a sum of Rs. 1 lakh was directed to be paid to such victim within 15 days of occurrence of such incident (or being brought to the notice of the State Government/Union Territory) to facilitate immediate medical attention and expenses in this regard. The balance sum of Rs.2 lakhs was directed to be paid as expeditiously as possible and positively within two months thereafter and compliance thereof was directed to be ensured by the Chief Secretaries of the States and the Administrators of the Union Territories.

It has been observed by the Supreme Court that, the hopeless victim, therefore, is indeed a cipher in modern Indian criminal law and its administration. So, although compensation is provided for under section 357, it is riddled with limitations, which often,

⁵⁷ Available at <http://Indiankanoon.Org/Doc/16029001/>

⁵⁸ (2013) 6 SCC 770

⁵⁹ (1965) 1 All ER 563

⁶⁰ Criminal Appeal Nos.406-407 of 2017 @ S.L.P. (Criminal) Nos. 9389-90 of 2016

add to the woes of the victim. Thus the restorative and reparative theories are not translated into real benefits to the victims⁶¹

Conclusion

A victim of a crime cannot be a forgotten man in the criminal justice system. It is he who has suffered the most. Injustice to victims in terms of reparation would create a constitutional vacuum in legal system. Although, retribution is primary function of law, reparation is the ultimate goal of the law. Hence, there is an all-round development of compensatory jurisprudence world over. India has anchored the compensation claims in the Constitution and Criminal Procedure Code, 1973. Sections 357, 357-A and 357-B of Criminal Procedure Code, 1973 hold launching pad of compensation in criminal cases. Though a comprehensive provision enabling the Court to direct payment of compensation has been in existence all through, the involvement has shown that the provision has rarely attracted the attention of the Courts.

The need for public victim compensation can be understood in view of the historic development of criminal law which gradually expanded into areas previously covered by tort law. This development resulted in the elimination of the victim from the criminal law proceeding, while the state assumed responsibility for action against the offender and relegated the victim's interests to tort law. However, two arguments can be advanced for public reparation to the victims of crimes, including the obligation of the state and social welfare concerns. The fundamental pattern for administration of victim compensation programs is the formation of a crime compensation board. Coverage is generally limited to the victims of crimes and, in cases of death or disablement, to certain classes of dependents.

Numerous issues regarding attention require careful study by framers of compensation programs, including monetary need as an eligibility requirement, compensation for pain and misery, reduction or denial because of victim fault, and compensation when victim and offender are related.

Time and again the Courts have been reminded that the provision is aimed at serving the social purpose and should be exercised liberally yet the results are not very inspiring. However, of late, the insertion of section 357-A and 357-B in Criminal Procedure Code, 1973 has triggered the new compensatory regime. The legislative trends that are emerging and the judicial expositions the courts are supplementing to compensatory law in India are to be reviewed and comprehensive legal regime need to be adopted so that the vacuum created in

⁶¹ *State of Gujarat and anr. v. Hon'ble High Court of Gujarat* AIR1998 SC 3164:(1998)7 SCC 392

existing legislations and constitution about the presence of victim may be filled with hopes.