

## ANALYSIS OF LEGAL PROTECTION TO RIGHTS OF VICTIMS OF VIOLENT CRIMES

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### ABSTRACT

*The rights of victims should be recognised by law. Restitution for loss of life, limb, and property should be provided for in the system.*

- *N.R. MadhavMenon*

Rights of Victim are derived from Article 21 of the Constitution of India. The necessity of the right of victim was felt by the courts when it was found that the victim, otherwise called as the initiator of the litigation, is losing confidence on and interest in the process of adjudication. The victim is not a passive object but an active component in the judicial process. The victim deserves similar kind of protection and attention from the court like that of an accused. This paper discusses and analyses the meaning of victims specified by several texts, institutions and judicial authorities, nature of violent crimes, international and national legal protection available to the victims and how the judiciary in India has played a major role in recognising the rights of victims. Further, with the help of recent case laws and discussion on government's efforts the suggestions regarding protection of victims and rightful implementation of compensation schemes are highlighted.

**Keywords** –Victims, Violent Crimes, Victim Compensation, Legal Protection, Judiciary.

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## INTRODUCTION

*“One of the most neglected subjects in the study of crime is its victims.”<sup>3</sup>*

The crime is inevitable in every human society and has been in existence since time immemorial. Directly or indirectly, repercussion of every crime is on the 'victim'. There cannot be a victimless crime thus both being interdependent. Conversely, crime has basically two elements; criminal (crime doer) and victim (sufferer)<sup>4</sup>.

'Victim' has its roots in the early religious notions of suffering, sacrifice and death. This concept of 'victim' was well known in the ancient civilizations, especially in Babylonia, Palestine, Greece, and Rome. In each of these civilizations the law mandated that the victim should be recognized as a person who deserved to be compensated by the offender.

The Babylonian code of Hammurabi<sup>5</sup>, instituted by the king of ancient Babylonia, one of the oldest legal codes, more than four thousand years old, is often cited as the first legal record and almost generous in compensating victims. It was the victim who was considered first, not the offender.

On the other hand, "Victim Rights" are privileges and procedures required by written law which guarantee victims specific considerations and treatment by the criminal justice system, the government and the community at large.

Under International Law, till the end of World War II, there has been virtually no consideration of the victim's perception of criminal justice system or compensation to the victim of crime by the criminal law and criminologist.

Recognizing that the rights of victims had not been adequately addressed, the General Assembly of the United Nations, in 1985, adopted the Declaration of Basic Principles of

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3. Schafer, Stephen in his book – *“Victimology – The Victim and his Criminal”*, (1977) Apprentice Hall Company, at 3

4. Available at [http://shodhganga.inflibnet.ac.in/bitstream/10603/7936/9/09\\_chapter%203.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/7936/9/09_chapter%203.pdf) (visited on 24/12/2016)

5. Babylonian code of Hammurabi: Hammurabi, the king of Babylonia, who died 175 BC (1792-50), known for code of laws, once thought to be oldest existing. Babylonia, the ancient country in the valley of the lower Euphrates and the Tigris.

Justice for Victims of Crime and Abuse of Power (Victims' Declaration)<sup>6</sup>. This document, although not a legally binding treaty, sets out the minimum standard for the treatment of crime victims, and has been heralded by some as the Magna Carta of the international victims' movement<sup>7</sup>.

In India, reparation or compensation as a form of punishment is found to be recognized from ancient time. In ancient Hindu Law, the law givers were fully aware of the necessity of directly compensating victims of crime. Thus, Manu in Chapter VIII, Verse 287 says<sup>8</sup> :

*"If a limb is injured, a wound (is caused) or blood (flows, the assailant) shall be made to pay (to the sufferer) the expenses of the cure, or the whole (both the usual amercement<sup>9</sup> and expenses as a fine to the King)."*

Manu thus, provides direct reparation to the victim of crime apart from the payment of fine to the king (the State).

In Chapter XXI, Verse 10, Brihaspati says<sup>10</sup> :

*"He who injures a limb, or divides it or cuts it off, shall be compelled to pay the expenses of curing it; and (who forcibly took an article in a quarrel restore) his plunder."*

As far as Indian criminal justice system is concerned, rights of victims are being recognised in various statutory provisions where compensation can be awarded to the victims of crime, viz. Fatal Accident Act, 1855, Probation of Offenders Act, 1958 and Code of Criminal Procedure, 1973. In pursuance of the recommendations of Law Commission of India in its report<sup>11</sup> a comprehensive provision for compensation to victims of crime has been inserted in section 357 of the Code of Criminal Procedure, 1973 (herein after Cr. P.C.).

In India, however, the rights of victims are still often overlooked. Unlike the accused, victims in India have virtually no rights in criminal proceedings, supposedly conducted on their behalf by state agencies. When state agencies fail to successfully prosecute offenders, as is

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6. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, U.N. Doc. A/RES/40/34 (Nov. 29, 1985).

7. A.S. Anand, "Victims of Crime — the Unseen Side", (1998) 1 S.C.C. (Jour) 13, 3-13.

8. Max Muller, "The Laws of Manu in Sacred Books of East", Vol. 25, Oxford University Press, Oxford, (1886), p. 304

9. Amercement: Punishment by a fine whose amount is fixed by a court.

10. Brihaspati, in Max Muller, Sacred Books of East, Vol. 33 Chap XXII Verse 7, Oxford University Press, Oxford (1886), p. 360.

11. 41st Report, Law Commission of India on Indian Penal Code, 1860 (1969).

often times the case, victims are left to either suffer injustice silently or seek personal retribution by taking the law into their own hands<sup>12</sup>. Ironically, the “guilty man is lodged, fed, clothed, warmed, lighted and entertained in a model cell at the expense of the State, from the taxes that the victim pays to the treasury.”<sup>13</sup>

India has largely ignored the protection of victims’ rights, irrespective of whether the perpetrator is the state or a private individual. Victims in India face significant, and sometimes undefeatable, hurdles during the investigation and prosecution of crimes. The filing of an initial complaint, in and of itself, is a challenging endeavour.

From 2006 to 2008, People’s Watch, a national human rights organization, undertook fact-finding missions on police torture across 47 districts in nine states in the country and came up with some startling revelations. Out of 6,063 cases they monitored, almost twenty percent of the cases resulted in police acquiescence, where the police failed to act upon victim complaints against other private individuals<sup>14</sup>. In some states like West Bengal, the rate was found to be as high as forty nine percent.

In light of the above mentioned facts and figures, it is pertinent to recognize the persons who are considered as victims of violent crimes, to make people aware of rights available to them under Indian law as well as International law, to understand the adequacy and insufficiency of laws with the help of judicial approach and last but not the least, to do the analysis of the present situation.

## DEFINITIONS OF VICTIM

The word ‘victim’ has been defined in various dictionaries (English and legal), legal declarations and statutes in the following manner:

### General definitions

**Merriam Webster** – “A person who has been attacked, injured, robbed, or killed by someone else”.

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12. N.R. MadhavaMenon, Victim’s rights and criminal justice reforms, *The Hindu*, Mar. 27, 2006, available at <http://www.thehindu.com/2006/03/27/stories/2006032703131000.htm>. (visited on 24/12/2016).

13. See K.D. Gaur, *Commentary on Indian Penal Code*, (Universal Law Publishing Co. 2006).

14. People’s Watch, *Torture and Impunity in India Annex* (2008), available at <http://www.pwtn.org/tortureandimpunitybook.htm>. (visited on 24/12/2016).

**Oxford Dictionary** - A person harmed, injured, or killed as a result of a crime, accident, or other event or action the legal definition of “victim” that is set forth in applicable constitutional amendments, statutes, and rules, and this definition varies from jurisdiction to jurisdiction.

### **Legal Definitions**

**Oxford Law Dictionary**<sup>15</sup> - A person who is actually and directly affected by an act or omission that is incompatible with the European Convention on Human Rights, or a person who is at risk of being directly affected.

**Black’s Law Dictionary** – ‘victim’ is a person harmed by a crime, tort, or other wrong.

### **Author’s Definitions**

The legal definition of ‘victim’ includes a person who has suffered direct or threatened physical, emotional or pecuniary harm as a result of the commission of crime; or in the case of victim being an institutional entity, any of the harms by an individual or authorised representative of another entity<sup>16</sup>. Thus, ‘victim of crime’ refers to any person, group or entity who has suffered injury, or loss due to illegal activity and the harm may be physical mental or economic<sup>17</sup>.

### **Statutory definition (India)**

As per Code of Criminal Procedure, 1973<sup>18</sup>, ‘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 includes guardians and legal heir of the victim.

**Interpretation** - This definition, which was incorporated by the Code of Criminal Procedure (Amendment) Act 2008, is a step in positive direction. However the term “for which the accused is charged” shows the restrictive nature of this definition. The definition is narrow when compared to the definitions provided in other International human rights instruments<sup>19</sup>.

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15 Elizabeth A. Martin, *“Oxford Law Dictionary”*, Fifth edition (2003), p. 526.

16. Rabindra K Mohanty & Satyajit Mohanty, *“Criminology, Penology and Victimology”*, 441(2012).

17. Dr Krishna Pal Malik, Penology, *“Victimology and Correctional Administration in India”*, 213(2012).

18. Sec. 2(wa) inserted by The code of criminal procedure (Amendment) Act, 2008.

19. Anusree A, *“Right to Compensation of Victims of Crime In India: Need for a Comprehensive Legislation”*, International Journal for Legal Developments and Allied Issues [Vol. 2 Issue 1], 2008 at 37

The first part i.e. “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” is already of wide enough import to include at least some legal heirs within its ambit<sup>20</sup>.

The word ‘victim’ would have to be interpreted contextually in reference to the nature of the offence; and it would mean the contextual sufferer of the offence and no one else and, as such, the reference in question should be answered in negative. Further, words "Guardian" and "Legal Heir" should be given their natural meaning and they should not be expanded by judicial interpretation<sup>21</sup>.

**Definition (International Law)** -Article 1 and 2 of United Nations General Assembly declaration of basic principles of justice for victims and abuse of power adopted in November 1985, defines it as –

“Victims” 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 prescribing criminal abuse of power.

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. Further, article 2 lays down that the term ‘victim’ also includes, where appropriate, the immediate family (person's parents, spouses, siblings, children) of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

## VIOLENT CRIMES – DEFINITION AND NATURE

The term “violent crime” has not been defined anywhere under the Indian Law.

Violent crime<sup>22</sup> that has as an element the use, attempted use, threatened use, or substantial risk of use of physical force against the person or property of another.

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20. *Ram Phal v. State and Others*, decided on May 28, 2015, available at <https://indiankanoon.org/doc/121117145/> (visited on 27/12/2016).

21. *Manoj Kumar Singh v. State Of U.P. & Others*, decided on November 11, 2016, available at <https://indiankanoon.org/doc/19103563/> (visited on 27/12/2016).

22. Bryan A. Garner, “*Black’s Law Dictionary*”, Ninth Edition (2004), Thomson Reuters at 429,.

“Violent crime” means “any felony which resulted in physical injury to the victim, any felony involving the use of a deadly weapon, terroristic threatening in the first degree and stalking<sup>23</sup>.

In the FBI’s (Federal Bureau of Investigation) Uniform Crime Reporting (UCR) Program, ‘violent crime’ is composed of four offences: murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault. Violent crimes are defined in the UCR Program as those offenses which involve force or threat of force<sup>24</sup>.

Violent crimes<sup>25</sup> are also called “offences against the person”, meaning that the physical body of another person was harmed. Common violent offences include Assault and battery, Homicides, Domestic violence, Robbery, Sexual assault and abuse, False imprisonment

Violent crimes induce a sense of insecurity and fear in the community. The frequency and the magnitude of such crimes also affect the public peace.

In India, following IPC (Indian Penal Code) crimes reported to the Police authorities by National Crime Records Bureau<sup>26</sup>, have been grouped as ‘Violent Crimes’ for the purpose of crime analysis -

### **I. Violent Crimes Affecting Body**

Murder, Attempt to commit murder, Culpable Homicide not amounting to murder, Attempt to commit culpable homicide, Dowry deaths and Kidnapping & Abduction;

### **II. Violent Crimes Affecting Property**

Dacoity, Making preparation & assembly for committing dacoity and Robbery;

### **III. Violent Crimes Affecting Public Safety**

Riots and Arson;

### **IV. Violent Crimes Affecting Women**

Rape and Attempt to commit rape

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23. Arkansas’ victims’ rights statute, Ark. Code Ann. § 16-90-1101(8).

24. Available at <https://ucr.fbi.gov/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/violent-crime> (visited on 26/12/2016).

25. Available at <http://www.legalmatch.com/law-library/article/non-violent-vs-violent-crimes.html#sthash.GwIKLdXL.dpuf> (visited on 26/12/2016).

26. Chapter 3 of NCRB report on Crime in India – 2015; available at <http://ncrb.nic.in/> (visited on 26/12/2016).

## **RIGHTS OF VICTIMS OF VIOLENT CRIMES UNDER INTERNATIONAL LAW**

There is international consensus that certain crimes including genocide, crimes against humanity, war crimes, enforced disappearance and torture constitute crimes under international law (hereinafter “international crimes”), and that perpetrators of these crimes must be held accountable, wherever they are committed<sup>27</sup>.

Victims of international crimes are at the very core of the fight against impunity for those crimes. States and criminal justice actors need to be aware of what victims’ rights are, and how they can be meaningfully and effectively respected.

A greater recognition of victims’ rights on the international level is observable in the following manner –

The General Assembly of the United Nations in its 96th plenary meeting on 29<sup>th</sup> November, 1985 made a Declaration of Basic Principles of Justice for Victims of Crime and abuse of power<sup>28</sup>, recognizing that millions of people throughout the world suffer harm as a result of crime and the abuse of power and that the rights of these victims have not been adequately recognized and also that frequently their families, witnesses and others who aid them, are unjustly subjected to loss, damage or injury. The Assembly affirmed the necessity of adopting national and international norms in order to secure universal and effective recognition of and respect for, the rights of the victims of crimes and abuse of power.

Declaration recognized four major components of the rights of victims of crime –

- (a) Access to justice and fair treatment – victims to be entitled to the mechanisms of justice & prompt redress for the harm concerned.
- (b) Restitution - offenders should make fair restitution to victims or their families. Restitution should be part of the sentencing in criminal cases.

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27. Available at [www.redress.org/downloads/publications/Extraterritorial\\_Jurisdiction\\_In\\_the\\_27\\_Member\\_States\\_of\\_the\\_European\\_Union.pdf](http://www.redress.org/downloads/publications/Extraterritorial_Jurisdiction_In_the_27_Member_States_of_the_European_Union.pdf).

28. General Assembly resolution no.(GA/RES/40/34).

(c) Compensation – when compensation is not fully available from the offender, state should provide monetary compensation to victims who suffered serious physical or mental injury for which a national fund be set up.

(d) Assistance - financial assistance should be made available to victims of violent crime who have suffered injury.

In 2005, the United Nations General Assembly adopted the Resolution on 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 that notes in its preamble *“that victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected, and that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged, together with the expeditious development of appropriate rights and remedies for victims”*.

Before and after the resolution of 1985 and 2005, several international instruments came up with the provisions for victims’ rights, like for instance –

Article 8 of the Universal Declaration of Human Rights, 1948<sup>29</sup> – It deals with the right to effective remedy through establishment of international tribunal.

Article 2 of the International Covenant on Civil and Political Rights, 1966<sup>30</sup> - It urges all the members to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.

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29. Article 8 - “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”.

30. Article 2 -

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1963<sup>31</sup>, It urges the members to provide for protection measures and establish tribunals to provide effective remedy to victims of racial discrimination.

Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984<sup>32</sup> - it urges the state parties to develop and maintain a legal system for redressal of grievances of victims of an act of torture.

Article 39 of the Convention on the Rights of the Child, 1989<sup>33</sup> - it urges the state parties to take appropriate measures to promote physical and psychological recovery of child victims.

Articles 68<sup>34</sup> and 75<sup>35</sup> of the Rome Statute of the International Criminal Court, 1998 – Article 68 focuses more on privacy and dignity of victims and section 75 discusses the measures of compensation, rehabilitation and restitution of victims.

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(c) To ensure that the competent authorities shall enforce such remedies when granted.

31. Article 6- States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

32. Article 14-

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

33. Article 39 - States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

34. Article 68

**Protection of the victims and witnesses and their participation in the proceedings**

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

2. As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.

3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner

Apart from the above, there are many countries, which have passed specific legislations for providing compensation to the victims of crimes<sup>36</sup>. To name a few of them, for example –

**New Zealand** - Compensation of persons injured by certain criminal acts and dependants of persons killed by such acts Act, 1963 that provides for state compensation to victims of crimes of violence.

**Great Britain** – Compensation and Restitution to victims Act, 1970 provides for establishment of criminal injuries compensation board which may award compensation from state funds to a person who has sustained personal injury from a crime of violence.

**USA (United States of America)** – The Victims of Crime Act of 1984 (VOCA) is United States federal government legislation aimed at helping the victims of crime through means

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which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

4. The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in article 43, paragraph 6.

5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

6. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of confidential or sensitive information.

35. Article 75

#### **Reparations to victims**

1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.

3. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.

4. In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under article 93, paragraph 1.

5. A State Party shall give effect to a decision under this article as if the provisions of article 109 were applicable to this article.

6. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.

36. G.B. Patil, Dr. "Compensation to the Victims of Crime: An Assessment of Legislative Framework", Cri.L.J. 2009, vol. 4, pp. 302-303.

other than punishment of the criminal. It established the Crime Victim's Fund, a scheme to compensate victims of crime.

**Australia** – Criminals Justice Act, 1988, which provides for immediate relief to the victims.

## **RIGHTS OF VICTIMS OF VIOLENT CRIMES UNDER INDIAN LAW**

*“The rights of victims should be recognised by law. Compensation and Restitution for loss of life, limb, and property should be provided for in the system”*

- N.R. MadhavaMenon

To verify, whether prevailing legal framework in India conforms to the norms and standards that were sought to be set by the U.N. Declaration on rights of victims (access to justice and fair treatment, restitution, compensation and assistance), legislative efforts made by the Indian government to provide relief to victims of crimes, are needed to be discussed such as:

### **Relief in the form of compensation**

Post-independence, criminal trials were governed by criminal Procedure Codes 1898 and then by 1973 Code (“Cr.P.C.”). Till the year 2008, there was a provision more or less similar in both the codes for compensation to the victims of the offence that is section 545 in the old Code and section 357 in the new Code.

### **Section 357 Cr.PC: Order to pay compensation**

#### **(1) In case of Conviction, fine is part of Sentence to Accused**

When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

- (a) **Expenses in Prosecution:** In covering the expenses properly incurred in the prosecution;
- (b) **Compensation to Victim:** In case of the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;
- (c) **Compensation in case of Death:** When any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence,

the fine imposed may be used in paying compensation to the persons who are covered for relief under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) **Compensation of Victim in other Offense:** When any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

### **(2) Payment of Compensation subject to Appeal**

If the fine is imposed in a case, which is subject to appeal, no such payment 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.

### **(3) Sentences without Fine**

When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, 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 accused person has been so sentenced.

#### **(ii) The Court empowered to impose Compensation**

The High Court or Court of Session or appellate court, when exercising its powers of revision may also make an order under aforesaid section. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

### **Analysis of section 357**

This provision of section 357 prescribes the person as well as the circumstance (i.e. conviction of the accused) in which the compensation can be paid to the victim. It is a fact that majority of people who are accused of and are convicted of crimes are poor and therefore this provision of accused dependant compensation was never a satisfactory answer to the

woes of victims of crime. The payment of compensation by the offender is not possible where there is acquittal or where the offender is not apprehended.

Further, the payment remains suspended till the limitation period for the appeal expires or if an appeal is filed, till the appeal is disposed of. The delay in the realization of the amount often adds to the woes of the victim. In that event is it not the duty of the state to compensate the victims of crime<sup>37</sup>.

Jeremy Bentham an English jurist and philosopher advocated compensation to victims, holding that, “satisfaction” should be drawn from the offender’s property, but if the offender is without property.... It ought to be furnished out of the public treasury, because it is an object of public good.

After insertion of the Code of Criminal procedure (Amendment) Act, 2008 and Criminal law (Amendment) Act 2013, a radical and impactful change is found in the Indian criminal justice system by introducing and redefining the rights of victim of violent crimes in the following manner-

- i) **Right to statutory recognition** - Section 2(wa)<sup>38</sup> of the Code of Criminal Procedure defines the term ‘victim’. This definition includes a guardian or legal heir of the victim as a victim and confers them the right equivalent to victim.
- ii) **Right to choose advocate** - Proviso to section 24(8)<sup>39</sup> of the Code of criminal procedure. By insertion of this section, the victim is able to engage his advocate of his choice to assist the public prosecutor.
- iii) **Special rights (women and child victim) –**
  - a. Proviso to section 26(a)<sup>40</sup> of the code of criminal procedure provides that offence under section 376 and 376 (A) to 376 (E) of the Indian penal code shall be tried as far as practicable by a court presided over by a woman<sup>41</sup>.
  - b. In the second proviso of Section 157 of the Code of criminal procedure, it is inserted that the statement of the rape victim will be recorded at the residence of the victim or in a place of her choice or as far as practicable by the woman

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37. *Ankush Shivaji Gaikwad v. State of Maharashtra*, AIR 2013 SC 2454.

38. Ins. by Act 5 of 2009, sec.2 (w.e.f. 31-12-2009).

39. Ins. by Act 5 of 2009, sec.3 (w.e.f. 31-12-2009).

40. Ins. by Act 5 of 2009, sec.4 (w.e.f. 31-12-2009).

41. Subs. by the Criminal Law (Amendment) Act, 2013, sec. 11, for “offence under section 376 and sections 376A to 376D of the Indian Penal Code (45 of 1860)” (w.e.f. 3-2-2013).

police officer in the presence of her parent or guardian or near relative or a social worker of the nearby locality.

- c. Section 173(1A)<sup>42</sup> of the Code of criminal procedure is made for stipulating a specific time of three months for the investigating agency to complete the investigation if the allegation relates to the offence of rape of a child.

**iv) Right to compensation –**

- a. Section 357A<sup>43</sup> of the Code of criminal procedure was incorporated in order to provide for the state government to prepare in coordination with the central government a scheme called “Victim compensation scheme” for the purpose of compensation to the victim or his dependents who suffered loss or injury as a result of the crime.
- b. Section 357 B and Section 357 C of the Code of criminal procedure<sup>44</sup>. Section 357 B provides that compensation payable to a victim shall be in addition to the payment of fine under section 326 A or section 326 B of the Indian Penal Code<sup>45</sup>. Insertion of this corresponding provision is meant to give effect to the abovementioned provisions of the Indian Penal Code, 1860, wherein fine is a necessary component of the sentence to be awarded to a victim of the said offence.

Similarly, section 357 C imposes positive and mandatory duty upon all hospitals run by either the central government or the state government, or local bodies or any other person, to provide immediate first aid or medical treatment to victims of the offences defined under sections 326 A, 376, 376A, 376B, 376C, 376D, 376E, as soon as the victim reaches there. In addition, a duty has been imposed upon the hospital to immediately inform the police of such incident.

### **JUDICIAL PERSPECTIVE (INDIA)**

Right of the victim was derived from the article 21 of the Indian Constitution<sup>46</sup>. The necessity of the right of victim was felt by the courts when it was found that the victim, otherwise

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42. Ins. by Act 5 of 2009, sec.16(a) (w.e.f. 31-12-2009).

43. Ins. by Act 5 of 2009, sec.28 (w.e.f. 31-12-2009).

44. Ins. by the Criminal Law (Amendment) Act, 2013, sec. 23 (w.e.f. 3-2-2013).

45. Ins. By the Criminal Law (Amendment) Act, 2013, sec. 5 (w.e.f. 3-2-2013).

46. Article 21 of The Constitution of India – “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

called as the initiator of the litigation, is losing confidence on and interest in the process of adjudication.

The judiciary has played a vital role by giving various relevant directives in order to give relief to victims of crime. They are –

1. *Delhi Domestic Working Women's Forum v. Union of India*<sup>47</sup>–

Supreme Court laid following guidelines for the assistance of rape victims –

(1)The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case.

(2)Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.

(3)The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.

(4)A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

(5)The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained.

(6)In all rape trials anonymity of the victim must be maintained, as far as necessary.

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47. (1995) 1 SCC 14.

(7)It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatised to continue in employment.

(8)Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape.

2. *Khatri v. Bihar*<sup>48</sup>

It was held that when a court trying the writ petition proceeds to inquire into the violation of any right to life or personal liberty, while in police custody, it does so, not for the purpose of adjudicating upon the guilt of any particular officer with a view to punishing him but for the purpose of deciding whether the fundamental right of the petitioners under Article 21 has been violated and the State is liable to pay compensation to them for such violation

3. *Rudal Shah v. State of Bihar*<sup>49</sup>

The Supreme Court ordered compensation to be paid by the state to a person who had to undergo wrongful incarceration for several years. It held:

The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due

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48. AIR 1981 SC 928.

49. AIR 1983 SC 1086.

compliance with the mandate of Article 21 secured, is to mulct its violaters in the payment of monetary compensation.

4. *Nilabati Behera v. State of Orissa*<sup>50</sup>–

This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings.

5. *Bodhisattva Gautam v. Subra Chakraborty*<sup>51</sup>–

It was held that:

- Fundamental rights can be enforced even against private bodies and individuals.
- It is not necessary, for the exercise of the Supreme Court's jurisdiction under Art 32, that the person who is the victim of the violation of his or her fundamental right should personally approach the court. The court can itself take cognisance of the matter and proceed suomotu or on a petition of any public-spirited individual.
- Rape is a crime against basic human rights and is also violative of the victim's most cherished fundamental right, namely, the right to life.

6. *Dr. Jacob George v. State of Kerala*<sup>52</sup>- power of imposing fine is intended to do something to reassure 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 as reconciling the victim with the offender.

7. *Tekan alias Tekram vs State of Madhya Pradesh (Now Chhattisgarh)*<sup>53</sup>.–

Victim being physically disadvantaged, she was already in a socially disadvantaged position which was exploited maliciously by the accused for his own ill intentions to

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50. AIR 1993 SC 1960.

51. AIR 1996 SC 922.

52. 1994 Cri. L.J. 3851.

53. AIR 2016 SC 817.

commit fraud upon her and rape her in the garb of promised marriage which has put the victim in a doubly disadvantaged situation and after the waiting of many years it has worsened. It would not be possible for the victim to approach the National Commission for Women and follow up for relief and rehabilitation. Accordingly, a victim who has already suffered a lot needs a specialrehabilitationscheme.

## **CONCLUSION AND SUGGESTIONS**

Indisputably, nothing in this world be it any amount of money, rehabilitation or condolences can in any way restore the dignity, confidence and faith that the victim loses due to the crime. Undoubtedly compensation can't bring peace to the life of people who have lost their near dear ones, their self-esteem, dignity or property in any form, in the violent crime but the compensation can in some way help the victim to start the life afresh. The trauma of the crime might remain but the compensation to such victims, to some extent can provide some relief from the anxiety & the tension in monetary terms. Secondly, granting of compensation also serves the deterrent purpose of punishment and restores the faith of the victim in the Judicial System.

Further, considering the grave nature of violent crimes viz. Rape, Murder, Mass Murder, Arson, Riots etc., it is the need of the hour that the term violent crime be defined under the Indian Law and special rights in way of separate & fast track trials, compensation to the victims of such crimes etc. be considered seriously.

As a way of suggestion the Central Government and the respective State Governments may consider it appropriate to formulate Schemes for Compensation of Victims of Violent crimes on the lines of existing scheme for compensation in cases of "Hit & Run" cases under the Motor Vehicles Act, 1988, which includes compensation schemes as well as provision for tribunals adjudicating the claims<sup>54</sup>. Depending upon the veracity and nature of the Violent Crime the appropriate Government may formulate the suitable guidelines.

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54.Chapter XI of Motor Vehicles Act, 1988.