

# COMPENSATION FOR SEXUAL ASSAULT VICTIMS: NECESSITY OF A ROBUST LEGAL FRAMEWORK

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## ABSTRACT

*The requirement for distinct rights for sexual assault victims in India is a pressing issue. To ensure the protection, justice, and support of survivors, it is essential to establish and reinforce specific rights tailored to their needs. The right to compensation to victims is not explicitly provided by the Indian Constitution and has always escaped attention. However, the Hon'ble Supreme Court of India has time and again provided compensation to victims. The article analyses the existing general legal framework relating to the compensation to victims of sexual assault in India. This preliminary inquiry will enable us to evaluate the tenets of laws for victim compensation in gruesome sexual assault crimes like rape/acid attacks. In India, there is a significant need for the establishment and strengthening of legal rights related to compensation for victims of sexual assault. Establishing comprehensive compensation legal rights for victims of sexual assault in India is essential to provide survivors with the financial support they need to recover and rebuild their lives. It not only acknowledges the harm suffered but also helps survivors regain a sense of justice and control over their futures. The article aims to analyse the status of victims of sexual assault crimes, the theory of victimology, victim compensation schemes, and the role of a victim in relation to Indian law. Further, the article suggests a need for a specialized and stringent legal framework for compensatory justice to the victims of sexual assault.*

**Keywords:** *Victims, support, justice, compensation, rights.*

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## INTRODUCTION

It is very rightly said that violators cannot live with the truth and the survivors cannot live without it. The intensity of pain and agony that survivors go through cannot be expressed in words in most cases. In the present-day era, ensuring rights of the victims has become an utmost necessity.

Justice is frequently associated with a mental attitude and a resolve to be fair and acknowledge the rights of aggrieved persons. However, the experiences of rape/acid assault victims seeking justice have generally been very unpleasant. The goal of justice is not just to punish the criminal, but it is also to give direction for restoring the life of the aggrieved persons.

Based on considerations of sex alone, violence against women is widespread around the world. Sexual assault crimes such as rape and acid attacks are examples of crimes which are becoming a common occurrence in India. Although India has adopted laws to protect such rights and to create a deterrent effect in combating such heinous crimes, it is unfortunate that there is no law or policy for rehabilitative measures for victims in the strategies framed by the States. The victims are treated as forgotten men during the judgement because there is a lack of substantive law to award compensation and restorative justice.<sup>3</sup>

The most valued, sacred, inalienable right is the right to life and personal liberty. The state has a legal obligation to protect citizens' rights, as well as a social obligation to compensate for violations of fundamental rights.

Providing justice by punishing the offender may satisfy the sentiment of the victim to some extent but it may not always serve it. And in a way it leads to the violation of the rights of the victims for the second time, proving the failure of the justice system. Since India follows the adversarial system for criminal justice, the victim's role is kept to the least though it is the victim who suffers the most.

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<sup>3</sup> G.S. Bajpai, *Victim in the Criminal Justice Process: Perspectives on Police and Judiciary* (Uppal Publishing House, New Delhi 1997); Randy E. Barnett, 'Restitution: A New Paradigm of Criminal Justice' (1977) 87 *Ethics* 279; David L. Roland, *Progress in the Victim Reform Movement: No Longer the Forgotten Victim* [1989] 17 *PEPP. L. REV.*

It is indeed strange that the entire mind of human rights as well as the system of justice has persisted on the rehabilitation and reformation of the offender<sup>4</sup> when it is the victim that plays the most important role by providing information as an eyewitness and helps the police in arresting the suspect.<sup>5</sup> The testimony of the victim is also relied on by the prosecutors and judges in court.<sup>6</sup> The Hon'ble Supreme Court observed the ignored status of the victims in the case of *Rattan Singh v. State of Punjab*<sup>7</sup>, as follows: -

*“It is a weakness of our jurisprudence that victims of crime and the distress of the dependents of the victim do not attract the attention of law. In fact, the victim reparation is still the vanishing point of our criminal law. This is the deficiency in the system which must be rectified by the legislature.”*

The above-mentioned observation by Justice Krishnan Iyer has also been taken into consideration in the Criminal Procedure (Amendment) Act, 2008.

Victim-orientation mainly includes an arrangement of reparation or compensation especially for victims who have suffered from violent crimes, provisions for better choices in trial and victim rights in the investigation process and the prosecution process.

## **INDIAN LEGAL APPROACH**

The courts at the subordinate level have ignored the right to compensation for victims despite there being some provisions under the Code of Criminal Procedure, 1973 and the Indian Constitution to safeguard victims' rights and provide compensation. The presence of an adversarial system for justice and criminal administrations can be seen as the genesis of the issue. Merely punishing an offender cannot restore the victim's life. The Criminal Justice System of the State should prioritize the restoration of the victims' lives. This should be one of their primary concerns.

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<sup>4</sup> Ahmad Siddique, *Criminology and Penology* 587 (6th edition, Eastern Book Company, Lucknow, 2011).

<sup>5</sup> Indian Evidence Act 1872, s 60.

<sup>6</sup> Susan E. Gegan & Nicholas Ernesto Rodriguez, 'Victims' Roles in the Criminal Justice System: A Fallacy of Victim Empowerment?' (1992) 8 *JCRED* 225.

<sup>7</sup> [1979] 4 SCC 719.

It is crucial to offer victims a major role - they should not be left alone to feel dejected.<sup>8</sup> This point has been made in several Supreme Court decisions where the situation of the victims has been described to be very significant, and if not taken care of properly, they may resort to unlawful methods which will result in an increase in the rate of crime.<sup>9</sup>

According to the Indian Constitution, the fundamental obligation of the state is to preserve law and order. As a result, when a crime is reported, it is the State's responsibility to get the crime investigated, to initiate the process of trial, and to prosecute him. The adversarial system of common law is employed in India and the presumption of innocence is in favour of the accused where the prosecution bears the burden of establishing guilt beyond reasonable doubt.<sup>10</sup> The accused also has the privilege of "the right of silence."

The Indian Constitutional Jurisprudence serves as the foundation of the doctrine of victimology. The Directive Principles of State Policy and the provision of Fundamental Rights form the bulwark of a contemporary social order, wherein the national soul of the country would blossom with economic and social justice (Article 38). In Article 41, it is the mandate of the State, inter alia, to ensure that effective provisions are made for "securing the right to public assistance in cases of disablement and in other cases of undeserved want". These provisions, if imaginatively expanded and emphatically intercepted, can be used to establish a constitutional framework for victimology.<sup>11</sup>

Under Article 32, the Hon'ble Supreme Court has been conferred with the power to devise such tools, as it deems fit and proper, for the purpose of ensuring the enforcement of fundamental rights and seeing that justice is done. This makes certain that in cases where redressal can be made available only through bestowing monetary compensation, the same is duly allowed and awarded to the victim.<sup>12</sup>

Since, a right without a remedy is meaningless, the right to approach the Apex Court has been provided under Article 32(1) of the Indian Constitution in case

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<sup>8</sup> Dr. Subhash Singh, 'Justice for Victims of Crime' [2008] *Criminal Law Journal*.

<sup>9</sup> A.S. Anand, 'Victims of Crime-The Unseen Side' (1998) 1 S.C.C. (Jour) 13.

<sup>10</sup> K.I. Vibhute, *Criminal Justice: A Human Rights Perspective of the Criminal Justice Process in India*, (6<sup>th</sup> edition, Eastern Book Company 2004).

<sup>11</sup> Law Commission of India, *1154<sup>th</sup> Report on The Code of Criminal Procedure, 1973* ( Law Com No 1154, 1996).

<sup>12</sup> G. Yethirajulu, 'Article 32 and the remedy of Compensation' (2004) 7 SCC J 49.

of infringement of a fundamental right wherein the Apex Court has the right to pass orders, writs or instructions for the implementation of such rights. Article 226 also gives the High Courts a parallel power to enforce Fundamental Rights or any other legal rights.<sup>13</sup>

### **Criminal Procedure Code, 1973**

A review of Indian laws reveals that the compensation provided to victims under Indian laws is pitiful. Under the Criminal Procedure Law, compensation to victims is covered by sections 357, 357A, 358, 359, and 250. The term 'victim' is defined under section 2(wa) of the Criminal Procedure Code Amendment Act, 2008 as follows:

*'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."*

What we can explicitly understand from the above definition is that compensation is a right of the victim, which arises at the initiation of the trial. The accused has always been given the benefit of doubt in criminal jurisprudence and he may also escape conviction for lack of adequate evidence.<sup>14</sup> However, when the commission of such a crime has actually taken place and the victim along with her dependents endured sufferings - it is the state's liability that the loss incurred by the victim is compensated. Further, the inability of the state to protect its citizens from each other is also a dilapidation of its legal structures in safeguarding the interests of its people. When, as a result of international pressure, human rights are being provided to the offender by the state and its organs, it is pertinent that being citizens of the same state, victims' rights and interests are protected as well. Within this frame of reference, it is fascinating to see that the word 'charged' has been incorporated as part of the recent amendment in criminal law. What this entails is that irrespective of whether the accused is acquitted or convicted, protection by the state is a victim's right.

The psychological and economic aspects of the victim are not elaborately dealt with in the Criminal Procedure Code of India. Though India has initiated efforts

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<sup>13</sup> Subhradipta Sarkar 'Ascertaining Civil Liability and Ensuring Victims' 'Right to Compensation' in Human Disasters: An Elusive Judicial Proposition' (2013) 3 GJLDP 101.

<sup>14</sup> A.S. Anand, 'Victims of Crime-The Unseen Side', (1998) 1 S.C.C. Journal 13.

in this regard, in line with international declarations however, the recent amendment fails to deal with victims of power abuse, contrary to international declarations, in which it is an embedded concept. Victims of power abuse refer to such individuals, who either personally, or as part of a collective, have had suffering and harm inflicted upon them. This encompasses both physical as well as mental injuries, emotional anguish and any economic loss suffered, in addition to substantial infringements of their Fundamental Rights through either actions or omissions which are not considered violations under the umbrella of criminal laws in our nation, contrary to internally prevalent human rights norms.

What is the current role assigned to the victim under the present criminal law structure? When information regarding a cognizable offence is provided to the police by the victim of such offence, it is imperative that the police have it written down and subsequently orally communicate the same to the victim. It is required to be signed by the informant, who is then entitled to receive a copy of the same, i.e. the FIR (Section 154(1) & (2) of CrPC). In a situation wherein the recording of such information is refused by the police, the right to dispatch a written post, addressed to the concerned S.P. is promulgated in Section 154(3) of the CrPC. Additionally, for whatever reason, if the investigation of the case is refused by the police, Section 157 (2) of the Act entails that the informant be notified of the same by the concerned police office.

On the other hand, the Code of Criminal Procedure under section 190 allows victims to forgo going to the Police Station for remedy and instead contact the Magistrate with their complaint. Complainants claim that when they go to the police with their complaints, the treatment is apathetic and complainants are occasionally harassed. There have been concerns that information is not recorded accurately by the police, who instead manipulate facts to suit their purposes. Cases that are cognizable are rendered non-cognizable, and the other way around.

The process of investigation is solely the function of the police, and victims of a crime are only involved if the police believe it to be essential. Certain states' police departments have administrative orders requiring them to provide victims with information on the status of their investigations when requested. Otherwise, the victim's position is pitiful until a charge sheet is submitted under Section 173 of the Criminal Procedure Code. This is the most critical moment for victims to receive aid

because the law is mute on the subject. If the Magistrate decides to dismiss the proceedings after taking cognizance of the police report, the informant-victim is issued a notice and is thereafter heard. The Court appears to have identified a gap in the legislative provision and ruled accordingly.<sup>15</sup>

It is an alarming situation when we consider victim witnesses who come from vulnerable sections of society. Cross-examination of witnesses, around which the adversarial trial is built, often adds insult to injury. Many a time, for several offences, the entire experience is no less than a nightmare for the victims. The Government, in acknowledging such plight, has recently adopted an amendment which would prevent assassination of the victim's character during trials of cases relating to sexual offences. Interrogation by the police should be done in a dignified manner and proper procedural law must be followed, with particular care being taken when victims of sexual offences are concerned. Sufficient funds should be disbursed by the Government to the courts and police to reimburse travel expenses, regular everyday allowance should be provided. Additionally, any professional loss being inflicted upon victims, who either in a court or police station, are appearing as witnesses, should be taken into consideration. The Government should supplement the overburdened judicial system by setting up additional courts in order to facilitate swift disposal of pending criminal cases. As is rightly said, "Justice delayed, is justice denied." Court management is an art, involving the ability to reject irrelevant questions and thereby controlling lengthy cross-examinations. Judges and magistrates should be trained so as to effectively master the art of Court management.

It is also pertinent to note here that there is a fair distinction between international declaration and Indian legal provisions in matters relating to remedial measures available to the victim, including victim compensation. The newly introduced Section 367-A of the CrPC brings to the fore a certain mechanism wherein a separate fund is to be set up exclusively for the purpose of providing victim compensation by the Legal Services Authority.

In India, antecedent to this Act's amendment, the provision dealing with victim compensation was ambiguous at best. There wasn't any provision defining the concept of a 'victim'. As per the original Act, compensation was to be provided only

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<sup>15</sup> N.V Paranjape, *Criminology and Penology* (12th edition, Central Law Publishing 2005).

to the person on whom such loss or injury was inflicted. Further, the benefit of compensation was only to be awarded either after the appeal, so preferred before the Appellate Court had elapsed or post decision of the appeal. Subsequent to its amendment, entitlement to receive the compensation was extended to include legal heirs and their dependents as well. Additionally, a new provision augmenting a separate mechanism for establishing the compensation to be awarded to the victim of the crime also found prominence in Section 357A of the new Act.

Section 357A has been inserted in the Code of Criminal Procedure, 1973 for the compensation and assistance to the victims of crime. The new provision directs each State Government to coordinate with the Central Government and develop a compensation plan with the goal of compensating the aggrieved or his relatives or dependents who have incurred loss or harm as a consequence of the crime and require rehabilitation. Under Section 357A, the Court must suggest to the District Legal Service or State Legal Service Authority the amount of compensation to be granted to the victims.

After getting the application form of the victims, the District Legal Service or State Legal Service Authority has to prepare a report within two months and submit it to the concerned Court. After being satisfied with the recommendation, the court may award compensation to the victims of the crime.

Other changes made in the Criminal Procedure Code and Evidence Act by the Criminal Law (Amendment) Act of 2013 include considering the character of the victim as irrelevant, presumption of no consent where the victim states that there was no consent, recording of the statement made by the victim and so on.<sup>16</sup>

The new law restricts judicial authority in determining compensation. It creates an additional remedy in circumstances covered by S. 357, as well as a new remedy if the offender is acquitted or if the offender is not recognised at all. In matters before the court, the court has the option to suggest further compensation if the compensation given under S. 357 is insufficient. In appropriate instances, the court may even make a recommendation to pay compensation even if the defendant is acquitted or discharged. However, the Legal Services Authority will determine the

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<sup>16</sup> Criminal Law (Amendment) Act 2013.

amount of compensation. In the absence of a legal process, i.e., where the accused cannot be identified, the entire discretion vests with the Legal Service Authority.

The victim has no right to file a claim with the Legal Services Authority for compensation or compensation enhancement. However, if the criminal is not recognised, the victim/dependent has the right to approach the authorities without the involvement of the court. This appears to be a legal anomaly that needs to be addressed because making such a distinction is irrational and illogical. There must be a centralised authority to rule on all compensation matters. They also do not provide for any effective participation of the victim in the Criminal Justice Process as envisaged by the restorative justice movement, thus making it an incomplete code. The new correction likewise accommodates no uniform plan of remuneration throughout India. Each individual state has been empowered to use their own discretion in formulating a scheme thereby making it a disparate one if implemented. Therefore, it may be reasonable to claim that the new law does not create clarity. It is merely a patchwork of legislation.

The interpretation of the Apex Court with regards to the real intention of Section 357 of the Code of Criminal Procedure which empowers the Court to award compensation to the victims of crimes, is elucidated in *Sarwan Singh v. State of Punjab*<sup>17</sup>. In this case, the Hon'ble Supreme Court has explained that-

*“While awarding compensation under Section 357, the Court must consider the gravity of the crime and injury of the victims and justness of the claim for the monetary compensation to the aggrieved”.*

Furthermore, in *Hari Singh v. Sukhbir Singh*, the Apex Court stated that compensation awarded under provision 357 of CrPC is in addition to the punishment, thereby not being ancillary in nature.<sup>18</sup> However, in situations where the victim cannot find the desired compensation, Section 482 can be exhausted by the aggrieved party for an alternative remedy.<sup>19</sup>

Furthermore, even the definition of victims as provided by the UN Declaration, 1985 is clearer and more comprehensive than this definition provided by the amendment. The definition of victim under CrPC is silent regarding situations

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<sup>17</sup> [1978] 4 SCC 111.

<sup>18</sup> [1988] 4 SCC 551.

<sup>19</sup> *Palanippa Gounder v. State of Tamil Nadu* [1977] 2 SCC 634.

where the perpetrator is not apprehended, convicted, identified or prosecuted. It falls short in taking cognizance of individuals who suffer whilst trying to aid victims in distress or help stave off victimization. The amendment has provided victims with a right to engage an advocate of their own choice and the right to appeal against any order but then it does not talk about indigent victims who are unable to exercise their own discretion in engaging advocates. Audio-video electrical means to record the testimony and statement of victims and witnesses have been provided for in this amendment. Also, the amendment has provided a comprehensive provision for enabling compensation to the victims of a crime.

From the analysis above, it is thus ascertained that a law has been enacted by the Indian Parliament for the victims of crime to serve and protect their interests. It affirms international standards and declarations. Nonetheless, any resemblance between the incorporated provisions of the Act with international declarations are few and far between, with the former being very narrow in scope as compared to the latter. Additionally, any compensation made available to the victims along with other effective remedies, depends primarily on the effective functioning of the Legal Services Authority.

### **Probation of Offenders Act, 1958**

Section 5 of the Probation of Offenders Act, 1958 is another arrangement which accommodates victim remuneration in Indian regulation. It provides as follows:

*“5. Power of court to require released offenders to pay compensation and costs. —*

*(1) The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay—*

*(a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and*

*(b) such costs of the proceedings as the court thinks reasonable.*

*(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.*

*(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.”*

By stating that the court may order payment of reasonable compensation to victims if it thinks fit gives the court the discretion to provide compensation.

Appointment of lawyer: Section 301(2) of CrPC allows a victim to instruct a pleader by providing as follows:

*“If in any such case, any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution...”*

Legal assistance to victims: Free legal aid has been provided under Section 12 of The National Legal Service Authority Act, 1987 for members of Scheduled Caste and Scheduled Tribe, women or children, those mentally unwell, victims of trafficking and industrial workman among others specified in the provision.

Setting the law in motion: By lodging an F.I.R. under Section 154 of CrPC regarding the alleged offence, the criminal law is set in motion.

## **RESTORATIVE JUSTICE IN INDIA THROUGH LEGAL PRECEDENTS**

Though the right to compensation is not expressly stated in the Indian Constitution. However, it has been acknowledged as an unlisted right through numerous judicial rulings. The courts in the country have acknowledged that the state is liable for the hardships caused to the victims on humanitarian and social welfare grounds, as well as on equitable justice grounds.<sup>20</sup>

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<sup>20</sup> Thilagaraj, R. and Liu J, *Restorative Justice in India: Traditional Practice and Contemporary Applications* (Springer, 2017) ISBN: 978-3-319-47658-2.

*Rudal Sah v. State of Bihar*<sup>21</sup> was the first case in which the Supreme Court granted compensation for illegal detention, laying the groundwork for compensatory jurisprudence in Indian history<sup>22</sup>, which was further refined in *Sebastian M. Hongray*<sup>23</sup>, *Bhim Singh*<sup>24</sup>, and many other instances.

The Court in *Saheli v. Commissioner of Police, Delhi*<sup>25</sup>, held that compensation exists for corporal injury, which includes assault or battery, physical injuries, death and so on.

The Court declared in *Saheli's* case that an action for compensation arises for bodily damage, which includes battery, physical injuries, death, assault, false imprisonment, and so on.

In the early rulings, compensation as a remedy was analysed and the courts concluded that compensation would be granted only in relevant situations, which principally involve the right of life and liberty and cases involving wrongful imprisonment and unlawful killings.

Compensation in cases of violence against women, particularly serious crimes like rape, might, nevertheless, be considered apart from the rest, because not only basic rights, but fundamental obligations and directive principles, are at stake.<sup>26</sup> Victims of such crimes endure persecution from society for the rest of their lives, and they become lonely. They are humiliated by what others might think of them, and they may be afraid of leaving their homes for fear of a negative reaction from the outside world.

Nonetheless, it became obvious in later cases that the possibility had significantly expanded. It was because the Supreme Court frequently started considering social and economic rights under the purview of Article 21 of the Indian Constitution.

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<sup>21</sup> [1983] 4 SCC 141.

<sup>22</sup> Vikram Raghavan 'Compensation through Writ Petitions: An Analysis of Case Law' (1994) 6 *Stud Adv* 97.

<sup>23</sup> *Sebastian M. Hongray v Union of India* 1984 SCR (3) 544.

<sup>24</sup> *Bhim Singh v State of J&K* [1985] 4 SCC 677.

<sup>25</sup> [1989] SCR 488.

<sup>26</sup> Vikram Raghavan 'Compensation through Writ Petitions: An Analysis of Case Law' (1994) 6 *Stud Adv* 97.

Because the Supreme Court has regularly included social and economic rights under the ambit of Article 21 of the Indian Constitution, compensation may be granted as a constitutional remedy for infringement of these rights.

The Indian Supreme Court is well-known for its judicial activism. The Hon'ble Court has also granted compensation to victims under writ authority in Compensatory jurisprudence. In another case, *Railway Board v. Chandrima Das*<sup>27</sup>, the Apex Court awarded compensation to the victim of a rape crime.

In the case of *Suresh Balkrishna Nakhava v. State of Maharashtra*<sup>28</sup> a girl aged 15 was raped by the accused numerous times who never informed about the incident to anyone for a long time due to the threats she received from the accused. The trial court convicted the accused and an appeal was filed against the judgement of the trial court. The accused's wife filed an affidavit while the appeal was pending before the Hon'ble High Court citing her indigent background and pleaded that if the accused were imprisoned, her children and elderly parents would go hungry. In order to balance the interests of the victim and the accused's dependents, the court imposed a sub-minimum punishment under Section 376 of the IPC and ordered the accused's wife to deposit Rs. 4 lakhs for the victim's future upkeep. Here also it is incredulous that the philosophy of the proviso under S. 376 of IPC is protected or not. It is doubtful whether the court can take into consideration the amount deposited by the wife of the accused a wealthy family are ample reasons for awarding a sub-minimum sentence. This kind of reduction in sentence has been widely disapproved by the victim rights movement. Jeremy D. Andersen states:

*“Although the victims' rights movement generally stresses retribution, and such notions do appear throughout criminal law sentencing, it is unclear why its use requires the reduction of criminal sanctions, as is seen in practice.”*<sup>29</sup>

Even today, courts do not usually provide compensation to victims, and the subject of victimology is still in its infancy. Yet the Hon'ble Madras High Court in *In*

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<sup>27</sup> [2000] 2 SCC 465.

<sup>28</sup> [1998] Cri LJ 284 (Bom).

<sup>29</sup> Jeremy D. Andersen, 'Victim Offender Settlements, General Deterrence, and Social Welfare', The Harvard John M. Olin Discussion Paper Series; Alan T. Harland, 'Monetary Remedies for the Victims of Crime: Assessing the Role of the Criminal Courts' (1982) 30 *UCLA L. REV.* 52.

*re Boya Chinnappa*<sup>30</sup> that came in 1950, awarded compensation to a victim of rape who was a girl of ten years. The Court acknowledged the importance of compensating jurisprudence even before the period of judicial activism. However, it is disheartening to observe how frequently our Courts in various regions of our country have forgotten this, resulting in the complainant getting doubly victimised during the trial.

In 1931 the Madras High Court said that a woman's modesty was not a matter to be taken lightly. In *A.D. Narayan Sah v. Kannamma Bai*,<sup>31</sup> the Madras High Court granted compensation to a lady who claimed she had been defamed for being unchaste. Following the decision in *P Parvathi v. Mannar*<sup>32</sup>, it was determined that a claim for damages based on such accusations was viable even in the absence of proof of exceptional damage.

The Supreme Court observed the State's responsibility to pay victims and defined boundaries for assisting rape victims in *Delhi Domestic Working Women's Forum v. Union of India*<sup>33</sup>, wherein the Hon'ble Court ordered the formation of a Board for compensation to rape victims for criminal injuries. The Supreme Court stated that the board should pay compensation whether or not the accused is convicted. The Supreme Court outlined the rationale behind this suggestion as follows:

*"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 incurred substantial financial loss. Some, for example were too traumatized to continue in employment. 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 the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of the child but if it is occurred as a result of rape."*

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<sup>30</sup> (1950) 2 MLJ 766 b.

<sup>31</sup> (1932) 62 MLJ 608.

<sup>32</sup> (1884) I.L.R. 8 M. 175.

<sup>33</sup> [1995] 1 SCC 14.

The Supreme Court of India, in *State of Gujarat v. High Court*<sup>34</sup> of Gujarat observed that legislation should be enacted by the State for the purpose of setting aside a certain fraction of prisoners' wages to financially compensate the deserving victims. This can be done either directly, by establishing a common fund or in any other manner deemed feasible by the State. The victim is unquestionably entitled to reparation, restitution, and the protection of his rights. If the victim of a crime is not given justice, criminal justice is rendered hollow. The Court went on to say that while an honour or a life cannot be repaid, monetary compensation can bring some satisfaction. However, the right to victim compensation and victim orientation is practised hardly in a few cases across the country. In a very recent judgement of the trial court at Kottayam, *State of Kerala v. Bishop Franco Mulakkal*<sup>35</sup> it seemed like the court had put the rape survivor on trial instead of the accused, and has gone about nitpicking and disbelieving her. The judgement was a travesty since it put the victim on trial instead of the accused. It overturned the criminal jurisprudence and completely disregarded the law of the land in the words of renowned criminal law practitioner Rebecca M John, Senior Advocate at the Supreme Court of India.

This shows that the sentencing policies of the Indian Judiciary are insufficient in providing justice to victims of sexual assault.

## CONCLUSION AND RECOMMENDATIONS

The discussions carried out in this article justify the hypotheses made by the author i.e., adequate compensation and support services to the victims are imperative for an integrated and effective criminal justice administration. This article takes an in-depth objective, analytical and comparative study of the aforementioned issues concerning the concept of victim compensation and the role of a victim in various stages that encompass the process of investigation, inquiry, trial, and witness examination in the Code of Criminal Procedure, 1973 to the extent necessary in relation to the subject matter along with other provisions in different statutes as well as precedents that have dealt with victim compensation. In the modern criminal justice system, increased awareness and understanding of the victims and the role

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<sup>34</sup> [1998] 7 SCC 392.

<sup>35</sup> C.P. No. 15/2019 of J.F.C.M. Court – I, Pala.

they play have been observed. However, it can be simultaneously observed that the laws are still very feeble in India as compared to other jurisdictions and therefore, watertight laws concerning compensation are a pressing priority / urgent necessity, especially in cases of atrocities against women.

Although there are some encouraging signs in the amendments and provisions included/integrated into the Code of Criminal Procedure, 1973 along with some judicial precedents which promote compensation to victims of heinous crimes, they are insufficient and must be revised with a new perspective in the criminal justice system in accordance with a new set of international norms. It would be incorrect to believe that the Apex Court is wholly unconcerned about victims' rights, for there have been cases where the Court has provided victims justice and paid them for the pain and suffering that they have had to undergo. In India, the introduction of the Victim Compensation Scheme, guidelines for the Central Victim Compensation Fund Scheme (CVCF), and revisions to the CrPC in 2008 and 2013 demonstrate that victims of crime cannot be overlooked and providing compensation and support services is one way to make amends for the injustices done to them. Nonetheless, victims' rights must be preserved by closing gaps and loopholes in the legal system in order to make it more responsive and just for everybody.

For gang rape survivors in India, the proposal of The National Legal Services Authority's (NALSA) scheme is to pay a uniform compensation of a minimum of five lakh rupees and a maximum of ten lakh rupees. Whereas, for victims of unnatural sex assault and rape, the said scheme awards a minimum compensation of four lakh rupees and a maximum of rupees 7 lakh. It is also seen that in the case of an acid attack victim whose face has been disfigured, the minimum compensation awarded is seven lakh rupees and the upper limit goes till 8 lakh rupees. In acid attack cases, if the injury is more than 50%, a minimum compensation of rupees 5 lakh and a maximum of rupees eight lakh is to be awarded. However, a uniform compensation for rape survivors should be present and the scheme should be a source of financial solace for victims of sex crimes and acid attacks during trial proceedings as well. Also, it is absolutely necessary to make a child victims of sexual assault inclusive scheme.

Furthermore, there is an urgent need to rewrite and clearly identify the rights of crime victims in the provisions of the criminal justice delivery system. Despite the

fact that the Indian government has taken significant steps to combat violence against women, these heinous crimes have not ceased completely and continue to ruin the lives of the victims. Furthermore, in comparison to European countries, the Indian government's initiatives are less focused on the rehabilitation of victims of these heinous acts. The victims' situation worsens because there is no clear rule governing compensation and rehabilitation. The Central Government's compensation program for financial aid to victims has various flaws, such as the sum supplied under the compensation scheme being insufficient and not based on any scientific methodology to restore the victims' lives. Also, there is a lack of uniformity in the laws for compensation across the country for the same crime, which should not be the case. Furthermore, the delay in providing compensation makes it difficult for the victims of such crimes to rebuild their lives. As a result, the current scenario necessitates specific legislation to offer victims restorative justice.

Taking cues from other foreign countries, model legislation should be drafted by establishing an independent Board. Additionally, separate funds should be created for compensating the victims of crime. As previously stated, it is the State's responsibility to offer justice to the victims, which includes equitably compensating them. In addition to monetary settlements, "fair recompense" should include non-pecuniary damages and related support. Another important idea is to use the Restorative Justice system and a victim-centred criminal justice system. Victims of crime should not be left in tears in the current context of the worldwide growth of the Human Rights movement, and it is important that justice should be served. It is important that the victim does not lose faith in the justice system. There is a need for strict compensation regulations in order to make up for the trouble that the victim had to go through. It is the need of the hour to take the concept of reparative justice a step further and create a parallel and effective remedy through separate legislation where a victim can seek compensation regardless of whether the accused is convicted or not.