



## JUDICIAL APPROACH TO PROTECTING THE RIGHTS OF CRIME VICTIMS AND ESTABLISHING A COMPENSATION FUND FOR THEIR INDIVIDUAL LOSSES

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### ABSTRACT

*The researcher has covered topics such as the writ jurisdiction of the Supreme Court of India and the various High Courts in India, the concept of Public Interest Litigation, the rights of victims of crime to receive compensation, the recommendations of the Malimath Committee concerning witnesses in the criminal process, the Witness Protection Scheme, the rights of victims guaranteed under various statutes, and the verdicts of the Supreme Court of India and the various High Courts in India. The Criminal Procedure Code Amendments, the judicial trend in awarding compensation, and the types of victims who have suffered as a result of violations of their fundamental rights are discussed, along with the Crime Victim Compensation Scheme and the various modes of compensation that are available to those who qualify for it.*

*Keywords: Fundamental, Recommendation, Compensation, Amendments, Protection, Witness*

### 1. INTRODUCTION

#### 1.1 Study of Victimology

Several victims of crime found it difficult to get the attention of those working in the criminal justice system. Officials like the police, prosecutors, and judges fall within this category. Although the authorities do a good job of investigating crimes, locating suspects, apprehending suspects, prosecuting suspects, and convicting suspects, as well as keeping the public safe, they turn a blind eye to the complaints of crime victims. No further input from the victim is received other than that which is presented in court as evidence. The victim receives no physical relief from the punishment meted out to the wrongdoer and receives only emotional gratification. His promises never bring him comfort. The victims' promises multiply, shattering social harmony. The need of giving priority to victims has just been confirmed on a worldwide scale. In recent years, victims, who were formerly seen as secondary players in the administration of criminal justice, have been moving to the fore. Traditional approaches to crime control, such as punishment and deterrence, are obsolete in today's penal climate. Restorative justice emerged as



a kind of justice for crime victims that takes a rehabilitative rather than punitive stance. For the restorative justice movement, restitution to victims of crime became an essential component. In response, the criminal justice system began placing a premium on providing "victim help," "victim rehabilitation," and "victim recompense."

All legal systems have ideas guaranteeing restitution to those who have been wronged. It was in the 12th and 13th centuries that a differentiation between civil wrongs and public wrongs was established. The victimisation was unique to those affected, therefore the offender was obligated to compensate them. Although it's true that wrongdoing in public may state takes on the obligation of punishing the offender since the crime impacted the general public. Benefit to victims, symbolic societal acknowledgement of victims' pain, deterrent effects on offender, reformative effects on offender, and "intrinsic moral worth of its own" are only few of the reasons given to justify compensation.

## **2. LITERATURE REVIEW**

**Raj, Prithivi (2021)**Victims' rights are important to the administration of criminal justice. This study investigates the function of the victim in legal processes. This article will examine how victims engage with and are affected by various components of the criminal justice system throughout the whole criminal procedure. The author will analyse the idea and evolution of Victimology and Criminology, as well as explain the Rights of Victims and their function under different laws. In this article, we will discuss the problems with the current criminal justice system and provide solutions to strengthen the position of victims. In this article, we'll examine the rights of victims of sexual offences and their participation in criminal processes. This article will analyse the laws enacted to safeguard victims' rights and the role played by the judicial system in doing so.

**Meher, Sumanta&Shukla, Gaurav (2018)**Terrorism's victims have suffered not just physical harm, such as death or paralysis, but also psychological and emotional distress. Although time may help cure the victims' wounds, the psychological and emotional scars left by terrorist attacks cannot be ignored. The victims of terrorism need international solidarity and a comprehensive restorative strategy with an efficient implementing mechanism to ensure the protection of their human rights and the rebuilding of their lives, which have been shattered beyond repair. Via its many resolutions, the United Nations General Assembly has both called on all nations to stand in solidarity with victims of terrorism and pledged to assist Member States in developing laws and policies to do so. Indian lawmakers revised the Code of Criminal Procedure, 1973 in 2008 to include Section 357A, which mandates that the government offer financial aid to victims of terrorism in order to fulfil the goals of the resolutions passed by the United Nations. Recent advancements in victims' focused studies in India have broadened the scope of the country's



conventional criminal justice systems in their efforts to safeguard the victims' rights. In this regard, the paper has determined the Indian legal framework for restorative justice for victims of terrorism and addressed the issue of whether or not the legislative provisions and enforcement mechanisms are effective enough to safeguard the human rights of victims of terrorism.

**M C, Janaki& T, Manikanta& S, Anil (2017)**Crime has been an issue for human civilization. It is still not able to exercise effective control over the commission of crime, despite the fact that laws and statutes have been drafted. Victims of such crimes suffer unimaginable suffering through no fault of their own, all because no preventative steps were taken by law enforcement. Hence, in such a situation, victims of crime need protection from all possible supports, including physical, psychological, economic, etc. Yet, whether or not victims really get any such protection from any institution within the Criminal Justice System is an open and shut case. This study is an effort to examine victims' rights and the administration of justice throughout the course of the legal procedure.

**Barn, Ravinder&Kumari, Ved (2015)**There is a lack of knowledge on the viewpoints and responses of the Indian Criminal Justice System and the court, despite the increasing number of documented occurrences of rape and sexual assault against women in India. This article analyses High Court decisions and the judges' attitudes on rape appeals through the lens of the 'complainant credibility' paradigm. This research offers insight on how the Indian judicial system makes judgements regarding the credibility of complainants and the guilt of suspects by examining the judicial system's understanding of conflicting realities.

**Wemmers, Jo-Anne (2013)**This article looks at the impact of the criminal justice system on the mental health of crime victims by exploring the phenomenon of secondary victimisation. The Modified Post-Traumatic Stress Symptom Scale was used to evaluate the victim's progress towards mental health (MPSSS). This is a prospective research that followed victims throughout the duration of their cases in the criminal court system. The victims' perceptions of the fairness of the proceedings were used as a yardstick for evaluating the authorities' treatment of them. Unfair practises were shown to have an effect on victims' recoveries when a general linear model with repeated measurements was used. Results and their potential significance are discussed in the last section of the essay.

### **3. PROTECTION OF THE VICTIMS' RIGHTS-JUDICIAL APPROACH**

The assault of one person's dignity may have far-reaching effects on that person and on society as a whole, therefore protecting that dignity is crucial to maintaining social peace. As a human being, you have certain rights that no other living thing can take away from you. Human rights are universal principles that no one should be denied their basic freedoms because of who they



are or where they come from. Often used synonyms for "human rights" include "basic rights," "fundamental rights," "natural rights," and "inherent Human rights are not a recent phenomena; the name "human rights" dates back to the 20th century, but the idea behind it is timeless. It has evolved through several phases to reach its current state of understanding. Civil rights, liberty, social, cultural, and economic rights were all present in ancient cultures, but under various names<sup>428</sup>. Every person should have access to these protections because they are in line with basic human values like freedom and respect for one's own dignity, and because they eventually help the greater good of society. In order for people to flourish as individuals, who in turn help advance society as a whole, human rights must be safeguarded. Human rights are a problem that has been noticed on a global scale, hence many different international institutions have been created to safeguard them. Human rights are fluid, changing to suit the circumstances of each country and its people. Both domestic and international law have the same overarching goal: to protect people's basic human liberties. When it comes to democracies, India is by far the largest. As a democratic nation, one of our primary duties is to safeguard our citizens' fundamental freedoms. The Indian government has given human rights protections serious thought. The Constitution of India demonstrates great care and respect for these rights by recognising them. Civil rights, political rights, economic rights, social rights, and cultural rights are all outlined in the Universal Declaration of Human Rights. Several of the rights enumerated in the International Declaration of Human Rights are protected by the Constitution. Section III of the Constitution deals with civil and political rights, whereas Part IV deals with economic, social, and cultural rights. Every law must be consistent with the guarantees of the Constitution.

### **3.1 Judicial Approach**

Even the Code of Criminal Procedure, 1898 acknowledged the ability of a victim of crime to obtain compensation, however this right was confined to cases where a substantive punishment of fine was given, and even then, only to the amount of fine actually realised. If the offender is not given a fine, compensation might still be awarded under Section 357 (3) of the Criminal Procedure Code. Unfortunately, courts seldom use this rule and do so inconsistently. According per the 152nd Report of the Law Commission, Section 357-A of the Criminal Process Code mandates that victims of crimes get monetary compensation at the time of sentencing: Rs.25,000/- in the event of physical damage not resulting in death, and Rs.1,00,000/- in the case of death. The Law Commission of India, in its 154th Report, expressed disappointment that the government has yet to implement its previous proposal. Also, it suggested adding a new Section 357-A to the Code to ensure that all victims are compensated in a timely and just manner. Compensation may be awarded under three general categories: I for injury; (ii) for loss or damage to the claimant's property as a consequence of the injury; and (iii) in the event of the claimant's death as a result of the injury, resulting in the loss of support to dependents. Nevertheless, the administration has done nothing to implement this suggestion. In the absence



of a workable and successful legislative scheme for compensation, the courts exercising their constitutional law authority have had to create novel means to give effect to the right of victims of crime to be paid. 449 The court ordered an ex gratia payment of Rs. 10,000/- to each of the victims in the Delhi Domestic Working Women Forum Case. To compensate two sisters for the rape they suffered at the hands of unknown perpetrators, the court in *Gudalure M.J. Cherian v. Union of India* ordered the State of U.R to pay a total of Rs. 2,50,000/-. In *State of Gujarat v. Hon „ble High Court of Gujarat*, the issue of whether or not victims of crime should be compensated out of the proceeds of prison labour was discussed. The court urged the State to pass a legislation allocating a percentage of inmates' earnings to compensate victims of the crime for which the inmate was incarcerated, either directly or via a common fund to be established for this purpose, or by any other practicable means. The right to financial recompense for crime victims is also a human rights concern.

### **3.2 Judicial System**

In contrast to the situation in certain other jurisdictions, notably in Europe, the criminal justice delivery system in India is based on the British model of prosecution of criminal crimes. In France, victims of crime have the right to participate in legal processes beginning with the inquiry phase. If the inquiry is stalled or misconstrued, victims may go to court to receive guidance and can even step in during the proceedings. Involvement of the victim in the trial is beneficial to the search for truth and does not cause any difficulties for the prosecution. The victim has the right to submit questions to the court for possible use while questioning the witness. If the public prosecutor does not perform their job properly, the victim might take over the trial. The victim has the right to provide his own arguments in addition to the state's. While considering whether to grant or terminate a trial, the court might take the victim's perspective into consideration. When a victim has suffered harm, they might use this to their advantage by presenting evidence in pursuit of reparation for their temporary difficulties.

### **3.3 Pro-active role of Judiciary to protect the Rights of Victim**

Notwithstanding the State's claims of exemption from culpability, the Supreme Court and the High Courts have, on many occasions, found the State responsible to pay compensation under public law remedies. In a unanimous decision, the Supreme Court made it clear that the defence of sovereign immunity does not fit within the framework of basic rights guaranteeing. Defense is unquestionably accessible for constitutional redress. If you've been wronged by the government or any of its agents or agencies, a private company, or an individual in the course of enforcing their rights under a licence issued under a statute, or in the course of doing what they're supposed to be doing in accordance with the law, you have a simple and inexpensive recourse available to you.



The Supreme Court of India has given public interest litigation in the country a new, multifaceted dimension. The conventional adversarial approach has been abandoned. Judicial activism has resulted in the court treating letters, newspaper articles, reports, complaints by public-spirited individuals, and social action groups about violations of fundamental rights as writ petitions and granting relief, including monetary compensation, through writ jurisdiction in accordance with Article 32 of the Constitution. The Supreme Court created an idea of fact-finding commissions to deal with writ petitions involving contested facts. In writ procedures, the Supreme Court or High Courts will often not hear arguments on questions of fact. The issue of law is the only thing they care about. When a case involving a question of fact is brought before the court, it will not hear the case and will instead refer the petitioner to a civil court for resolution. The Supreme Court of India, however, has invented the process of fact-finding commissions to inquire into the disputed facts and submit report before the court in order to consider the correctness of the facts placed before the court in cases of claim for compensation through public law remedy under Article 32 of the constitution of India, rather than forcing the petitioner to resort to private law remedy. The court uses this kind of evidence to determine whether there has been an invasion of privacy or other constitutionally protected rights and, if so, whether or not the plaintiff should be compensated in writ proceedings.

#### **4. CRIME VICTIM AND COMPENSATION FUND SCHEME**

The term "compensation" refers to a monetary payment made to make up for a person's financial loss or harm. All compensation should be geared at restoring the sufferer to their pre-loss financial position. According to the Supreme Court's recent rulings in *Ankush Shivaji Gaikwad v. State of Maharashtra* and *Suresh v. State of Haryana*, all lower courts now have an obligation to review compensation claims. The victim of a crime, who is given a central role in the study of criminal law, and who has incurred financial loss as a result of the accused's actions or inactions is the primary focus of the idea of compensation in criminal law. The victim experiences not only bodily harm, but also mental anguish and material loss. Court processes that go on for days and police officers who are rude and aggressive only make a victim's situation worse. So, the victim's pursuit of justice is agitated.

This view holds that reparation to the victim should be an integral part of any punishment programme, alongside deterrence. As a result, the intention of punishment, which is to protect society and discourage the criminal, is not served in India's criminal justice system, which has shown too much compassion to the criminal. As a result, crime victims are often overlooked throughout this procedure. Several hypotheses were explored above to explain why victims are ignored by the criminal court system and its system of retribution. In the eyes of the law, he is still a "forgotten man." No victim of crime can get any real justice, even if the perpetrator is punished severely. It is only via payment of compensation that a reasonable equilibrium may be



reached. Consequently, recompense is a prerequisite for reform and punishment, as well as the spirit of real deterrence. Compensatory jurisprudence is a superior alternative to other theories of punishment, despite the fact that deterrence and retribution may seem helpful in preventing criminal activity. It helps victims of crime get over their financial hardships and imposes a suitable punishment in the form of compensation.

#### **4.1 Philosophy and Objective of Compensation**

The concept of victim compensation, especially by the State, is growing in popularity. Whilst the concept itself is rather ancient, it has only been in the last few decades that it has started to be developed along more scientific lines and as a subfield of criminology. As a component of their overall welfare, contemporary welfare states have established elaborate victim compensation schemes in recognition of the significance of the issue recompense to victims of crime. There have been several nations that have adopted some kind of victim compensation programme. In the United Kingdom, Canada, Australia, and New Zealand, there is a board in charge of disbursing compensation money to victims of crime. First, from 1965–1975, State compensation and initiatives by probation officers; second, from 1970–1980, rape crisis centres, shelter homes, and victim support schemes; and third, from 1980 onward, institutionalisation of victim support and the call for justice, as described by Van Dijk in a brief essay on the 'Victims Movements.' These broad characteristics provide a helpful framework for analysing the victims and criminal justice policies of numerous nations. Using particular historical examples, Van Dijk has additionally elucidated the victim's position:

1. The first tenet of the Care 'Ideology' was the emphasis on the humane alleviation of pain and social distress. It is critical of the bureaucratic and stigmatising elements of State welfare organisations and places less emphasis on the criminal nature of the offence.
2. Crime victims are included in the rehabilitation 'ideology' because its proponents are more interested in the offender's treatment than in their punishment.
3. Third, when restorative and preventative justice programmes are opposed, the retributive 'or criminal justice ideology' develops. Its goal is to penalise the criminal according to how much harm they did to society and to the victim. This worldview assumes that the victim of a crime is motivated by a search for redress, moral vindication, or vengeance and advocates for the victim's right to have a voice in the criminal justice process.

#### **4.2 Controversial Aspects**

An examination of crime and punishment throughout history finds a growing preoccupation with the treatment of the offender and a near total absence of interest in the victim's plight. Such musings, possibly more prevalent now than ever before, indicate a novel path forward for the



Criminal Justice Systems of emerging nations. It's customary and "in style" to cry for the guilty, but does the law shed any tears for the nameless martyr who paid the price for crime? Honourable Judge Krishna Iyer's reflective statement on the situation of victims in the Criminal Court System vividly illustrates the gap and ignorance of the System towards victims. Each nation's criminal justice system exists to safeguard citizens and the state from those who would violate public order by acting contrary to accepted standards. This goal is primarily pursued by following the law while punishing the accused, and in doing so, making sure the accused's rights are protected. But, it is revolting to realise that, globally, the systems have not been showing much care for the victims who are the "by-products" of the crime.

A crime-control programme that saw criminal justice as a State monopoly with a restricted emphasis on justice confined to the State and the accused dominated the Criminal Justice System in the years leading up to independence. In the post-independence era, however, its focus shifted from the offender's reform and rehabilitation to the victims' misery and worries. The victim's claims have traditionally been assumed to be adequately fulfilled upon the offender's conviction and punishment, although this is far from the truth. A victim's role in a criminal case is limited to that of an informant providing significant evidence; in most instances, the victim's own action of reporting the incident to the police initiates the criminal procedure. But, after then, he is no longer needed until the police decide otherwise. In most situations, he is still harassed under the name of gathering sufficient information even if it is agreed to go further.

### **4.3 Compensatory Justice**

As a kind of redress for wrongs done, compensatory justice involves paying victims monetary or other forms of relief. It is a method of resolving legal disputes in which a victim's injuries are quantified in monetary terms. There are instances of this kind of justice being administered in the criminal court system, usually when a person has been wronged. Reparative justice is the process of aiding a victim of wrongdoing such that the victim's suffering might be lessened or even reversed. There is more to criminal law than just punishment and deterrence. The trend now is towards compensating justice models that put the victim at the centre. Several civilizations have developed systems to deal with these problems. The objective behind compensatory justice isn't only to rehabilitate the victim; rather, it leads to a system where social values in considering such acts as anomalies, entitling the victim to some type of recompense owing to the crime's seriousness. As a result, several nations have put into effect the idea of a publicly financed and supervised agency to recompense victims of violent crime. State compensation is provided not just in cases where the State is at fault, but also in cases when the crime committed is particularly heinous or brutal. Hence, the State must compensate the sufferer in order to fulfil its obligation to provide compensating justice.



#### **4.4 Comprehensive statutory and State obligatory Crime victim Compensatory Scheme**

It's hardly shocking, given that a victim of crime in the United States will always be at the mercy of the law enforcement agencies and the courts. When the Supreme Court of the nation steps in to grant compensation in a case like BilkisBano, it is not a cause for celebration, but rather an opportunity to critically analyse our criminal justice system (CJS), which fails to achieve justice for the victims of crime in the usual course. Poor execution of the victim compensation mechanism provided for in section 357A of the Criminal Procedure Code has reached a critical stage. It is rare and takes a long time for the Indian Supreme Court or High Courts to intervene in the subject of victims receiving compensation via remedies under Article 32 or 226 of the Indian Constitution. In light of this, Legislative Compensation was established under Section 357A of the Criminal Procedure Code. As a consequence, those who have been victimised by crimes or similar acts may now sue the government for restitution of losses and rehabilitation costs. It also includes a clause for interim compensation. The court may decide to award damages regardless of whether the perpetrator has been identified, arrested, tried, or convicted. Under the judges' advice, the state's District Legal Services Authority will dole out the compensation. In India, the compensation programme for victims has not taken off. According to the National Crime Record Bureau's (2016) report, there were only 38,947 rapes registered in the whole nation. In 2018, NALSAR presented a report to the Supreme Court highlighting shocking statistics: barely 5-10% of sexual assault victims nationwide get compensation via the different government systems. Prior to the award given to BilkisBanu, the maximum amount of money given to crime victims was Rs 10 lakh. The BilkisBano case doesn't live up to the ideals espoused by the United Nations Declaration for Victims of Crime and Abuse of Power from 1985. This Declaration, which is a driving force behind the global victim-centric reforms, calls for comprehensive, statutory support for those who have been victimised by crime. When it comes to helping victims of crime, the Indian CJS falls short of the goals outlined in the United Nations Declaration.

As a representation of how the CJS in India handles victims of crime, BilkisBano's distress is not an exception. The criminal justice system often overlooks and disregards crime victims. The police, prosecution, and courts sometimes treat victims badly, leading some to believe they have been "secondarily victimised" as a result of the ordeal. Even if victims get some kind of recompense from the state, it is likely to be inadequate, and the ordeal itself will have a demoralising effect on them. A significant problem in India is the lengthy and complicated procedure required to get compensation. However, victims and their loved ones often lose trust in the CJS due to the tight qualifying requirements, the lengthy and unclear process, and the



subsequent payment of funds. Comparatively, the Criminal Injuries Compensation Authority (CICA) and the Criminal Injuries Compensation Appeals Panel in the United Kingdom make their compensation decisions within 12 months (CICAP). Remarkably, the compensation scheme is being run in all 50 of the United States' states. Temporary compensation is also included in the scope of victim care and aid. But, in India, its effectiveness is still up for debate. There's a correlation between the verdict in a trial and the amount of money you get in damages. In addition, the compensation will be delayed since trials here are notoriously slow. Despite the existence of more than 400 special "rape courts," the victims of this crime still wait long periods of time for justice to be served. According to the NCRB (2016), there are now 1,330,000 rape cases in the judicial system.

## **5. CONCLUSION**

Crime victims in cities and rural regions alike need the federal and state governments to implement a number of initiatives designed to raise public knowledge about their legal rights. In cooperation with the National Legal Services Authority and the State Legal Services Authority, the Government of India must create a dedicated department to raise public knowledge about the rights of victims of crime. When the unfortunate victim has no idea what is occurring in his or her case, he or she should have the right to be heard during bail or be given the chance to assess the facts and aid the prosecution at the time of hearing the bail petitions. The establishment of a Compensation Board is essential for the prompt resolution of cases involving compensation, and the victim should be compensated based on the merits of the case. Interim compensation must be granted if there is a holdup in the investigation or trial of cases, and complete settlement of compensation should be provided to the victim of crime upon final disposition of the cases.



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