

Victim: A Forgotten Story in The Indian Criminal Justice System

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Abstract

A criminal offence is as an act against a State which it monitors through the criminal justice system through its stakeholders such as police, judiciary, civil society, the present laws, and the citizens. Rules and policies are there, but awareness and its implementation remain a challenge causing hindrance to access to justice. In a criminal trial, the accused is given all the rights to defend himself. However, the position of the victim seems to be lost in the process that needs an overhaul by the collective working of the stakeholders of the criminal justice system. The victim is a mere prosecution witness in the case where the crime is being committed against him. It is time to think whether the victim is adequately heard, participated, informed in the criminal trial. Victim compensation is now a statutory right though the implementation scheme varies from State to State, which is again a concern of disparity with the victim status of the victim. The existing rehabilitation programs are only in the form of compensatory jurisdiction of the court where any procedures like that do not bind the courts compared to the accused persons is being with accused challan, medical slip, the process of arrest is followed. The statutory rights which are available for the victim remain a concern that whether such rights, for instance, the right against appeal against acquittal, inadequate compensation, and lesser punishment is duly exercised by the victim.

Keywords: *Criminal justice system, criminal process, victim rehabilitation, victim compensation, victim compensation scheme, stakeholders of criminal justice system.*

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INTRODUCTION

Access to justice is not only enabling a litigant whether he is an accused or victim to reach the doors of the court, but justice must be available at affordable costs and which is efficacious. The criminal justice system works on the principle that no innocent is to be punished, and that is the reason why victims remain a forgotten story in the justice delivery system due to innumerable rights for the accused. An accused is protected at every stage since the commission of a crime, but the present criminal justice system somewhere forgets that it is the victims who go through such ordeals and sufferings.

The criminal justice system doesn't point out the all-round check or follow a rights-based approach though there are several remedies when such victims. The victims are referred to as a mere prosecution witness in a criminal trial. Practically it is impossible for the protection of all witnesses in the justice delivery mechanism. Still, there is a need for a victim protection mechanism where if a witness or a victim of a case feel insured, he should be able to take such services effectively. Another area of concern is the victim compensation procedure, which is often referred to as a rehabilitative mechanism for the violation of rights caused to him, which was the primary responsibility of the State for his protection. The victim compensation fund, which has been established by the Central Government along with post '*Nirbhaya*' case corpus amount to aid the existing schemes.

The author, through this paper, has tried to highlight the present issues in the criminal justice system, which makes the victims to hold a secondary position. The second part is the rehabilitation process, which will enable the victims to lead a regular life again when the victim compensation scheme is implemented correctly.

VICTIM A FORGOTTEN ASPECT IN THE CRIMINAL JUSTICE SYSTEM

The international law, as well as the domestic laws, has equally ignored the victims and their rights in the criminal process as the criminal in the criminal process had far more reference regarding a right-based approach. An accused cannot be reprimanded unless the guilt has been proved. This makes us think about the victims of crimes and other citizens towards whom the State also owes a duty for the protection of their rights, but there is hardly any protection available legally. There are several instances when witnesses face danger and killed because a criminal process runs on the corroboration of evidence which a witness completes. Victim compensation and victim participation in the criminal process work an approach towards distributive justice, which is yet to receive formal recognition. When a person has been arrested and then after a later point of time is acquitted through the

criminal process, the societal stigma continues with him which, makes it difficult for him to run his healthy life. It is observed that he was first the accused in the case. Later on, he becomes a victim due to the criminal justice system. Institutionalized Centers to help them psychologically overcome the injury which they have suffered along with making them aware of their further recourses is an integral part and needs much attention.

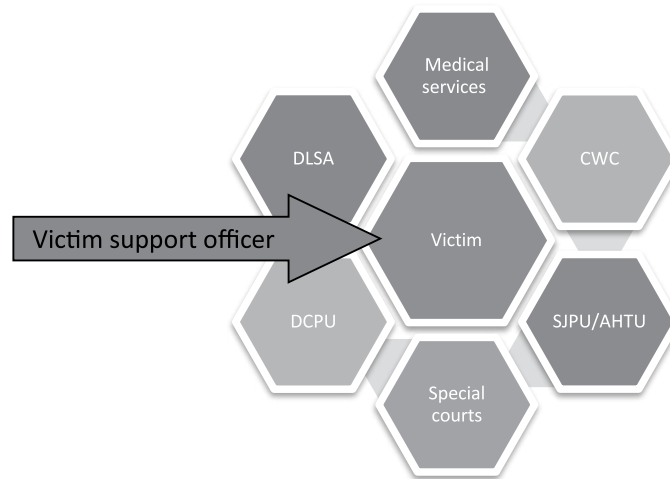


Figure:1 The position of victim in the criminal justice system of India

The model shows that the victim is surrounded by various key players of the criminal justice system. And each stakeholder has its role and functions, here we must not forget that the victim is traumatized with the crime which has taken place upon here. Considering the services to be availed from the stakeholders it is the need of the hour to have ‘victim support officer’ to help the victim to avail the services and also appeal in case the service is not extended.

2.1 International Regimes in Protection of Victim Rights

The international players composed of many nations, experts, inter-governmental agencies, NGOs’ and the world society of victimology¹ began with the passing of UN Resolution² for starting functions of the “*international penal and penitentiary commission*” which in 1955 started the “*prevention of crime and the treatment of offenders*” by creating an ad hoc advisory expert which in 1971 came to know as crime prevention and control

1 Journal of Victimology the Evolution of International Victimology and its Current Status in the World Today P. 37-81.

2 415 (V).

(CCPC). This aimed in focusing where people are victimized at large based on economic and political power. Finally, it was the world society of victimology in the seventh congress of in Milan, Italy where a delegation of 30 victimologist led by LeRoy Lamborn and Irvin Waller after discussion the UN secretary general Javier Perex de Cuellar came up with a draft deceleration of “*basic principles of justice for victims of crime and abuse of power*” which the general assembly approved in three months later and adopted on 29th November, 1985.

In June, 1985 the Europe’s committee of ministers adopted recommendation³ on the “*position of the victim in the framework of criminal law and procedure*”. Twenty-two countries who implemented⁴ the R. (85) 11 recommendation were Luxembourg, Malta, Netherland s, Austria, Belgium, Cyprus, Denmark, England and Wales, France, Germany, Greece, Iceland , Ireland , Italy, Liechtenstein, Norway, Portugal, Scotland , Spain, Sweden, Switzerland (Zurich) and Turkey as pointed out by Hoegen and Brien in 2003.

This was followed by adopting the Rome statute in July, 1998 by the UN general assembly for establishing international criminal court (ICC) for combating crimes of genocide, crimes leading to human suffrage, war crimes and crimes resulting from aggression. Trust fund for victims were created for looking into the physical, material and psychological needs for victims of those crimes in which courts have prosecuted coming into force in 1st July, 2002. Article 68 of the treaty inspired the victimologists which mentioned about “*protection of the victims and witnesses and their participation in the proceedings*” giving a clear direction about how victims should be given their due position in a criminal trial without jeopardizing the rights of the accused. (Groehnuijsen and Letschert, 2012 p.11)

The United Nations Declaration on Victims⁵ has been referred a many time about the rights which the victims should get in the criminal justice system:

- i. Right of being treated with respect and recognition;
- ii. Right of having proper support services;
- iii. Right of being informed about the case;

3 R. (85) 11.

4 Supra note 2.

5 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) available at <http://www.un.org/documents/ga/res/40/a40r034.htm> (last visited 26th January, 2018).

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- iv. Right to the presence and provide an impact statement during sentencing;
 - v. Right to legal representation;
 - vi. Compensation from both offender and State;

Reparation which can explained as needs in form of materials or money which is paid from the exchequer of the state for the victimization caused to the victim. It was found that it is a practice to compensation as the last resort to keep the victim silence against the state⁶. New Zealand was the first country to think about victim compensation in 1963, followed by England in 1964 and US in 1965 with the State of California, finally with the legislating the victims of crime act in 1984.

2.2 *Victim impact statement:*

Victim impact statements⁷ are developed in the USA to enable the victims to inform the court about the consequences of the crime. Britain adopted the same in 2001 as victim personal statements through the judicial system in British excludes the judiciary's eye to consider views made by the victim on sentencing. Many scholars have contended that it is unfair as this might have unprecedented impacts upon victims also affecting the sentencing process. At times this false raising hopes in the victims could burden the victims with decision-making responsibilities. However, consultative participation, which also becomes effective during a hearing of bail applications along with proper explanation, will certainly not be a burden upon victims. The "*Declaration and the Council of Europe*" recommended have discussed service rights, which included measuring the injuries and losses suffered by the victims while deciding compensation. The Indian penal system gives the accused a chance of being present while the judgment is being pronounced in the court. At the same time, the victim had the last chance of being present officially in the court at the stage of evidence. It is often seen that after several years as a trial in India ranges from three to five years or more; it is seen the victim comes to know at a very later stage about conviction or acquittal of the accused. The right against acquittal or lesser punishment or inadequate compensation as envisaged in the Code of Criminal Procedure lacks implementation as the victim is not aware of the present situation of the trial and available legal remedies.

2.3 *Secondary Victimization/Re-victimization:*

6 Schafer, 1960.

7 Matthew Hall on Victims of Crime Policy and practice in criminal justice PG 39; Willian Publishing (2009).

Re-victimization relates to the attitude of the criminal justice system towards the victim of the crime. The victim has already gone through the ordeal of the crime, which is committed upon her. Subsequently, the stakeholders of criminal justice system, which include the police, court, government advocates, and other agencies that contribute towards the re-victimization of the victimized. We need to understand here that the victim is already victimized, and any further detrimental attitude will be further victimization upon the victim. Secondary victimization involves a lack of understanding⁸ of what kind of suffering and pain the victim has gone through, which often leaves them isolated and insecure from the criminal justice system. This often leads to prolonging the crime, which has already taken place, leading to trauma, changes in the attitude, behavior, acts, or omissions, which keeps the victim secluded from society.

In the case of victimization, it often leads to an individual's working life. It is the duty of the employer that it should consider any victimization suffered by the employee, whether it relates to work or any other form. The process of labeling a person as a 'victim' requires taking into consideration how the 'person' has been injured physically or psychologically and whether the factors contributing were beyond the control of the victim. While referring to secondary⁹ victims, the group that first comes to our minds associated with the relatives of homicide victims, as these victims tend to face this sudden and unexpected event for which they could not foresee. Survivors feel murder is an attack on moral assault and the murderers as evil. The "*Victims Code of Practice, 2006*", which is prevalent, recognizes access to a range of support services in their area, and they should have access to a range of support services in their area along with a dedicated liaison officer. The process of expansion¹⁰ and bringing in more and more persons who are affected by crimes will dilute the degree of harm with a large number of persons being identified as victims, which increases the demands for various degrees of crimes. To regulate the process, in England, the Government has established one hundred sixty-five witness centers that perform as a sole point of connection for providing information and coordinate with a 'commissioner for victims and witnesses.

Victims of sexual assault feel revictimized when they inform the crime, undergo a medical examination, and questioning as the case reaches the court. These victims experience secondary victimization in their everyday lives from kin, friends, or others in

8 European Forum for victim services available at https://apav.pt/apav_v3/images/pdf/social_rights.pdf (Last Accessed 5th November, 2018).

9 Rachel Condry on Secondary Victims and Secondary Victimization, International Handbook of Victimology CRC Press (2010).

10 Ibid PG 240.

their neighborhood. Barriers in the justice system also led to further victimization such as fear or dislike towards the police, fear of the legal process, lack of proof that the incident occurred, or unaware of reporting a crime. The emotions of shame, stigma, and victim blaming is much more in the traditional mindset of the society, often stronger with secure moral codes and prohibitions around female victims.

The above practices should be adopted in the criminal justice system of India. Still there is no direction form of laws about concerning respect and recognition, support services, victim impact statements to form part of victim rights.

2.4 Parole proceedings:

The parole laws in South Australia¹¹ previously vested the power with the parole board to hear the applications if otherwise, the criminal court had not stipulated anything. Lately, the reform which was brought in 2015 has created a framework of victim participation in the parole board. Now the Board also considers the safety of the society, the behavior of the prisoner, and report on social background, physical health, psychological or psychiatric condition. It is also argued that the parole board should take into consideration the impact of the release of the deceased victim's family and other co-victims, which includes their safety¹² concerns. The law of South Australia has a concept of informing the victim about an upcoming parole hearing. The victim register that maintains the details of the victims to provide details are kept confidential, which also has a fine up to \$10,000 when misused. The victims are allowed both oral and written submissions when the prisoners file for parole. The law has in place a Commissioner¹³ of Victim who ensures in tracking down non-registered victims and interested parties, which includes a nest of kin, extended family members of the deceased, witnesses or other relevant persons as the number of victims is small than the number of would-be victims. The present law of parole in the as per the West Bengal Correctional Services Act 1992 is a right for the prisoners. However, a trend can be seen only convicts are given parole as it is feared that the under trails may flee. A report is sorted from the Inspector General Correctional Services from the Probation cum After Care officer who is an officer under the Correctional Services Act and another report from the local police station where the accused resides. However, the highlights upon which these

11 Michael O'Connell AM APM Sarah Fletcher and Giving Victims a Voice in Parole Hearings: South Australia's Experience *Journal of Victimology and Victim Justice* 1(1) 42–62 2018 National Law University Delhi SAGE Publications *see also* <http://journals.sagepub.com/home/vvj> (Last Accessed 5th November, 2018).

12 Ibid.

13 Ibid.

reports are considered lacks the mention of the fact whether the victim or their family will face any imminent danger from the release of the accused.

3. ORIGIN OF VICTIM RIGHTS IN INDIA

It remained the fact that the victim¹⁴ was not a party traditionally and had no legislative role in the criminal trial other being a witness for the prosecution. It is to be noted that when the victims of crime are also the witness of the case, the victim has two roles one being the victim of the crime and the other being the witness of the crime. In this regard, how the Indian legal system has ensured its protection¹⁵ remains a question of doubt. At present, the Indian Evidence Act protects a witness from being asked any scandalous question, offensive question, or questions that are detrimental to towards them, but what about their protection or where is the obligation upon the investigating agencies to provide protection¹⁶. The 154th report of the law commission discussed about providing allowances to reach the court, accommodation, and other rights, but how far these rights are made aware how far they are implemented remains a question in the Indian legal system. “*Dr. V.S. Malimath*” report on the reforms of the criminal justice system recommended following the United States model of witness protection. Over the last thirty years, the law and policy changes which are brought in England and common law countries have created substantial rights for the victims. Rights such as informing victims during the criminal trial process, right to be remained informed, present a victim impact statement during the sentencing of the court along with compensation and restitution. The change which the victim in the criminal justice deserves will not only be served right unless where a vision of the role of victim in a criminal trial is clearly demarcated. It is also to be noted that each victim differs from the other in relation to their needs and expectations from the criminal justice system. At times the victims are here for justice, healing offender, accountability of the offender, public acknowledgment, protection from further victimization, and may also look for emotional or monetary support or, at times, just want the offender to be punished. The commission’s report listed the following victim’s interest-based rights such as:

1. Treatment with respect and dignity;

14 Victorian Law Reform Commission Report on ‘The role of victims of crime in the criminal trial process’ available at www.lawreform.vic.gov.au (2016) (Last Accessed 7th November, 2018).

15 Prof. Dr. R. Venkata Rao on Witness Protection System and its Challenges Karnataka State Law University Journal Vol. IV No. 1 & 2 (2016). See also at http://www.kslu.ac.in/English/assets/upload/attachment/1639190989_KSLU%20Journal%20Volume-IVNo1n2.pdf (Last Accessed 7th November, 2018).

16 Ibid.

2. Providing information and support;
3. Participate in decision making without being concerned about prosecution decision making;
4. Protection from trauma, intimidation and unjustified interference with privacy during the criminal trial process;
5. Ability to seek reparation;

3.1 Rights of accused viz-viz victim rights

The accused is protected at all stages upon the commission of a crime, i.e., pre-trial¹⁷, trial, and post-trial, as the criminal justice system works on the principle that no innocent shall be punished. The protection of the accused is equally essential to ensure the aspects of human rights. Still, in the process of the same somewhere, there has been a deviation¹⁸ from victim rights who, in the present system, is in a marginalized position.

Respect and recognition are fundamentals. It must start from the police stations as police officers are the first touchpoint with the victim; lack¹⁹ of women police officers is another reason which makes a victim of crime when it is a woman to suffer re-victimization. The force needs regular and professional training in handling such victims when they come to police stations one has to understand the need and cause of such person coming to the police station which will instill faith in the victim with the system. Regarding victim impact statements, we do not have any specific laws or provisions where the court is bound to take such a statement before the pronouncement of the judgment²⁰. A victim of crime remains a lost entity from being a charge-sheeted witness in the police final report²¹ then becoming a prosecution witness in the court. The present scenario is that a victim of a crime can only narrate the ordeal and thereafter, become the spectator. A victim has suffered the

17 The three stages can be explained as in pre-trial is the stage where the court is yet to take cognizance of the case, the accused gets or has principles in law for ensuring proper arrest procedure, move application of bail where he is produced first thereafter approach the sessions court, if rejected along with medical and proper care during period of detention. The second stage is the stage where trial is going on adequate chances from providing free legal aid, revision application, bail for the aged persons, relaxation of condition of bail and such other rights are provided. In the third stage or the post-trial the accused has the right to prefer appeal against an order of conviction along with other statutory rights.

18 G S Bajpai on Criminal Justice System Reconsidered: Victim & Witnesses Witness Perspectives (2012).

19 5 lakh posts vacant in police forces available at <https://www.indiatoday.in/pti-feed/story/5-lakh-posts-vacant-in-police-forces-857180-2017-01-15> (last visited 26th January, 2018).

20 Common law system in England.

21 Charge sheet or final report under section 172 of Cr.P.C.

injury along with the aftermath effects of it, so he/she is in a better position to explain it better than the public prosecutor with taking reference from the police report.

Another intriguing area is situations when bail and anticipatory bail is moved by the accused in the court. Public prosecutors defend bail application on behalf of the State and the victim of a crime, which is the only recognized right of a victim, this falls short when they don't. The role of the defacto complainant cannot begin unless he has participatory rights in the trial as presently, he is unaware aware that such an application when filed in the court of law. Another essential aspect is whether the public prosecutor or the State empaneled lawyer has tried to contact the victim who has suffered the injury. These things are not mandatory by law, but if incorporated, victim rights will be strengthened in the criminal justice system.

Offences of drugs, sexual violence on women, liquor, arms and ammunition, cybercrimes depend upon the chemical report or the ballistic report, which comes from the certifying officer which becomes an essential part of the case. The future of these cases gets affected when the reports are delayed due to infrastructural or logistical issues setup further infringes victim rights as the accused uses this gap to get bail for the accused person in the case.

VICTIM COMPENSATION and REHABILITATION IN INDIA:

Compensation is a form of reparation which existed in the ancient laws where the offender had to pay often termed as a sovereign right. The Manu²² law made it mandatory for the offender to pay compensation along with expenses incurred for the cure in case of injuries to the sufferer. (Das 1997)

The law²³ of Vishnu and Yajnavalkys had the concept of compensation for the victim of a crime regarding the injury they had suffered. Compensation is calculated upon twice the purchase price, which was paid during the purchase along with district provision for fine. Compensation was also given to traders or businessmen who lost their property while traveling in the kingdom. It is observed that there was the minimal role of the victim in the process. The only aspect considered was looked into was about a satisfactory way to cure his injury.

The growth of the centralized legal systems slowly wiped out the concept of

22 Bharat Das on Victims in the Criminal Justice System (1997).

23 Ibid, PG 39.

restitution to the victim directly. The Government started to create laws, policies, and rules for its people, and offences against the subjects of the State were treated as crimes against the State, which was dealt with by the public prosecutor. The State decided what punishment the offender deserved against a particular offence committed, the model of the imposition of fine which was collected from the offenders slowly began to prevail over the restitution²⁴ model directly to the victims. Off late, it was discussed that restitution is a civil remedy where the victim has to fight a civil case for monetary compensation. Restoration is considered a civil matter as it fails to acknowledge the multivariate approach of criminal justice system. Instead, restitution should be treated as an integral part as it finds not only punishment but also acceptance of the harm caused and responsibility of the offender. The foundation of early laws was on personal reparation to the victims by the offenders directly. The idea should be to make the offender realize that; How much injury is has caused the victim? What wrong has he done to society? And after that, make personal reparation for that injury along with usual criminal justice sentencing. This makes it clear that restitution must be included in the criminal justice system module as a step towards correction and practice.

Restitution can only succeed in case the accused is tried and proven guilty. It also depended upon the financial condition of the accused for proper restitution process. This gave rise to the theory of payment of direct compensation to the victim of crime, i.e., compensation, as this doesn't depend on the position of the, accused that whether he can pay it moves with the locus stand i that a crime is committed and the greater responsibility is of the society. Here lies the reason that when an offender commits a crime it is usually against the State.

4.1 Compensation to victims of crimes in India under the criminal jurisdiction:

In India, “*The Code of Criminal Procedure (1973)*” governs the procedure of compensation²⁵ through Section 357 of the Code where fines which are recovered from the offender and are used for paying compensation to the victim. It is to be noted here that the grant of compensation by the courts depends on the capacity²⁶ of the offender who is liable to pay the fine. In case the offender is unable to pay the fine the chance of getting the compensation is lost by the victim in the due process. In another instance, when

24 The terms such as restitution, reparation, compensation is often used interchangeably by the authors while dealing criminal-victim jurisprudence. It is a directive issued by the court in monetary terms or in form of labour which is given to the victim by the convict.

25 Section 357 of the Code of Criminal Procedure, 1973.

26 Ibid.

an offender is convicted under the law and based upon the principles of criminal law, the accused person here has the right to file an appeal or revision application. When the application is submitted in the court after the conviction, it puts a stay on the proceedings and the lower court judgment that is the sentence, and the fine amount is suspended²⁷ till pendency of appeal²⁸ or revision,²⁹ as the case may be. This a serious aspect that needs keen attention because, till the time the appeal or the revision application is disposed of, the victim will not get the compensation amount as the payment of fine is suspended, and if at any case the judgment is reversed, then the victim has no chance of such compensation. It is also important to note that the duty of the State is not only rehabilitation³⁰ of the offender, but also proper rehabilitation mechanism is required for the victim who has a firmer ground to be protected by the machinery of the State. It becomes a duty of the State to reimburse³¹ for any loss suffered by the citizen due to lack of law and order.

The statutory nomenclature of the victim compensation³² is paid³³ from the fine recovered from the offender when a court passes sentence the fine also becomes a part of it which can be either partly or wholly used in any of the following:

- a) Expenses occurred while the case was going;
- b) Pay any person for any loss occurred due to the occurrence of any offence and when the court believes that such compensation is said to have recovered in a civil court;
- c) Compensation to such persons who are entitled to recover loss under the “*Fatal Accident Act 1855*”;
- d) When the fine does not form the part of the sentence, the court can separately award for payment of compensation to the victim by the accused. A specific order for paying compensation to the victim by the accused helps the victim when the accused prefers an appeal against the judgment. As an order for hearing the appeal after admission will not stay the ‘fine’ given to the victim when the sentence is suspended.

27 Section 374 of the Code of Criminal Procedure, 1973 – Appeal against conviction.

28 Ibid.

29 An application under Section 482 of Cr.P.C.

30 Supra n. 29 at 71.

31 Ibid at 66.

32 Supra note 26.

33 Ibid at 74.

The Criminal Amendment Act³⁴ of 2008 inserted Section 357A, which dealt with the proper procedure of victim compensation along with the mechanism for processing the same. The provision illustrates by adding on to that all the States in consultation with the Central Government shall set up a victim compensation fund from which the victims of crimes will be compensated. The District Legal Services Authorities (DLSA) and the State Legal Services Authorities (SLSA) were given the power to decide upon the quantum of compensation upon receiving a reference from the court about payment of compensation. The provision further mentions if after the completion of the trial, the court found that the amount of compensation given is not adequate in terms of Section 357, then it can grant more compensation. The provision also provided the victim with compensation when the crime is committed against him/her but the trial could not be completed as the offender was not traced, in this scenario the victim or his family members can directly approach the DLSA/SLSA for claiming of compensation and such inquiry has to be completed by the authorities within two months of such application.

This amendment provided a wholesome approach, or we can also term it as a rights-based approach for victim compensation and rehabilitation from the earlier reference of Section 357 Cr.P.C. Previously the victims were at the mercy³⁵ because the fine depended on whether the amount was recovered by the courts for grant of compensation when the court has awarded compensation.

Central Government issued guidelines³⁶ known as central victim compensation fund scheme (CVCF) guidelines with objectives of:

- a) To provide additional support to the existing victim compensation schemes notified by the State Governments and Union Territories.
- b) To reduce the disparity in the quantum of compensation for victims on similar crimes.
- c) To encourage the States and Union Territories for effective implementation of the Victim Compensation Fund along with continuing support to the victims of crimes of rape, acid attacks, a crime against children, acid attacks, crime against children, human trafficking etc.

34 Criminal Amendment Act 2008 available at <https://www.india.gov.in/code-criminal-procedure-amendment-act-2008> (last visited 26th January, 2018).

35 Supra n. 29 at 71.

36 Central victim compensation fund scheme (CVCF) guidelines available at http://mha.nic.in/sites/upload_files/mha/files/CVCFGuidelines_141015.pdf (last visited 26th January, 2018).

4.2 Compensation scheme for women victims/survivors of sexual assault/ other crimes 2018:³⁷ This one of the policies framed based upon the directions of the Supreme Court in the writ petition (C) no. 565/2012 titled Nipun Saxena Vs. Union of India, the learned court opined that “it would be appropriate if NALSA sets up a Committee of about 4 or 5 persons who can prepare Model Rules for Victim Compensation for sexual offences and acid attacks taking into account the submissions made by the learned Amicus. The learned Amicus, as well as the learned Solicitor General, has offered to assist the Committee as and when required. The Chairperson or the nominee of the Chairperson of the National Commission for Women should be associated with the Committee.”

The scheme is well-drafted and creates an obligation upon the SHO/SP/DCP of the Police to submit softcopy/hardcopy of the FIR after being lodged with the DLSA/SLSA for offences covered under 326A, 354A to 354D, 376A to 376E, 304B and 498A which enables the SLSA/DLSA to complete the preliminary inquiry regarding the disbursement of interim compensation. The scheme also mandates that regarding an acid attack victim, the concerned DLSA has to release the compensation of Rs. One lakh within 15 days after that, two more lakhs of rupees within two months. Further, the schemes also enable the victim to get an interim compensation of Rs. 10000, as the application of compensation is filed.

The issues relating to the scheme:

- a) How far is the online application in the District Legal Services Authorities/ State Legal Services Authority a reality?
- b) How far is it possible to complete the inquiry within 60 days?
- c) What is the position of other victims in regard to the disbursal of compensation within 15 days? This needs coordination with the number of sittings of criminal injuries compensation board meetings which depend upon the availability of the chairman of DLSA who happens to be the head of the judiciary occupied in several other judicial works. A full-time member or the secretary of DLSA must be empowered to convene these meetings with an option of being headed by any additional district judge in that courtship.

37 NALSA guidelines of 2018 : Compensation scheme for women victims/survivors of sexual assault/ other crimes 2018 available at http://wcd.nic.in/sites/default/files/Final%20VC%20Sheme_0.pdf (Last Accessed 5th November, 2018).

- d) The scheme³⁸ is not applicable to victims of sexual abuse of children under POCSO Act, 2012 as the power is envisaged with special court but the special court can only come across the case record when the case is transferred from the C.J.M./A.C.J.M. court after commitment. This takes lot of time and defeats the purpose of the right of interim compensation.
- e) The police³⁹ has been directed to transfer the copy of the F.I.R. to DLSA/ SLSA but police is already sending all copies of F.I.R. to the court of C.J.M./A.C.J.M. upon institution also the police are uploading the copies of the F.I.R. and complaints in their website. The court of C.J.M./A.C.J.M. can be given the power of awarding interim compensation as they come across the F.I.R. for the first time or the DLSA/SLSA must procure from the police district websites with the help of the paralegal volunteers.
- f) Lastly, how far the guidelines which required the respective State governments to create a uniform amount of victim compensation across States is a success?

4.3 Judicial view:

1. **Ankush Shivaji Gaikwad Vs. State of Maharashtra** - The Supreme Court⁴⁰ has held that Court is expected to assign proper reasons while refusing to award compensation to the victim. Therefore, normal rule is to award compensation to the victim and exception is to refuse the same, that too on assigning valid reasons.
2. In **Ratan Singh v. State of Punjab**⁴¹ the court observed that “*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 legislation.*” It was further noted by the court that the victim was totally ignored or was used as a source of information about the crime and criminals. However, in ancient times victim was the central figure in the criminal jurisprudence. In ancient civilizations the victim of an offence was the central figure. In the pre-modern era, the victim had a vital say in matters which

38 Sl. no. 18, Repeal and savings.

39 Sl. no. 5, Procedure of making application before the SLSA or DLSA.

40 2013 (6) SCC 770.

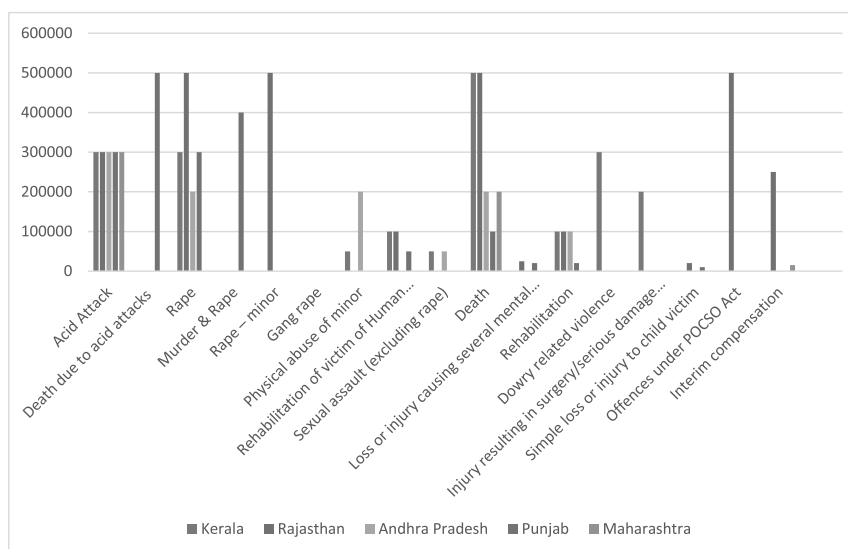
41 1979 (4) SCC 719.

were connected with restitution or retribution. Gradually after the evolution of the government systems the offender or the accused became the central identity and victim became a forgotten story.

3. **Rattiram and Ors. v. State of M.P.**⁴² has aptly emphasized on protection of victims' rights: "*Criminal jurisprudence, with the passage of time, has laid emphasis on victimology which fundamentally is a perception of a trial from the view point of the criminal as well as the victim. Both are viewed in the social context. The view of the victim is given due regard and respect in certain countries. It is the duty of the court to see that the victims' right is protected.*"

4.3 Position of Victim Compensation Fund in India: Below is the comparison of the victim compensation scheme in the five states in India selected randomly by the author. The schemes⁴³ which are notified by the Governments of the five states are considered for this comparison.

Figure2: Implementation of victim compensation scheme in the States of Kerala, Rajasthan, Andhra Pradesh, Punjab, Maharashtra.



The offences are taken considering the crime against women and adjacent compensatory benefits in the particular State. The author in this above comparison table

42 AIR 2012 SC 1485.

43 Victim compensation schemes available at <https://www.latestlaws.com/wp-content/uploads/2015/03/Victim-Compensation-Scheme-of-States-UTs-in-India.pdf> (Last Accessed 21st February, 2020).

has tried to show a comparison of the victim compensation scheme across five states in India. It indicates the nature of injury along with a prescribed range of compensation, which can be claimed by the victim or his family. The table after careful observation further shows that in some states for a particular type of injury, there is compensation. For the same type of injury, there is no compensation in the other State. Another important to be noted is that the victim of crime receives a varied amount of compensation when the nature and type of injury remains the same. It is observed that Rajasthan and Maharashtra have incorporated the concept of an interim compensation in the victim compensation for better implementation, whereas Rajasthan further goes on to add compensation separately for the victims under POCSO Act.

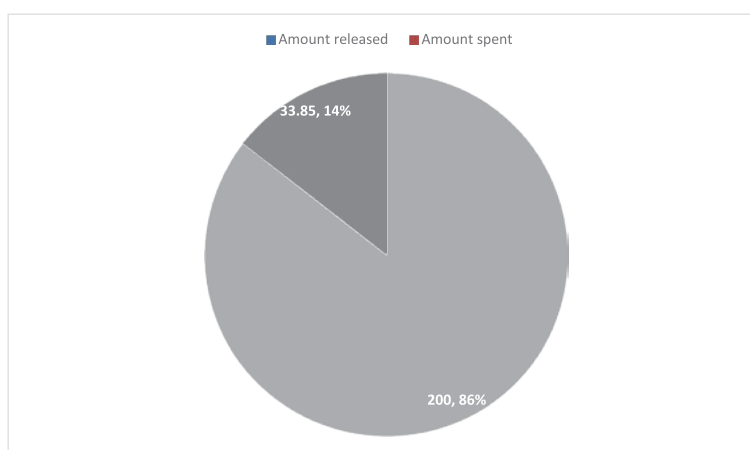


Figure3: Implementation of victim compensation scheme in India 2014-18⁴⁴

The 200 crores of one-time fund was set-up by the Department of Economic Affairs (DEA) of the Ministry of Finance (MooF) of the Government of India where the states could only spend 33.85 crores though the States could use the fund only after consuming non-budgetary resource with the States. States like Andhra Pradesh, Chhattisgarh, Goa, Jammu and Kashmir, Kerala, Maharashtra, Manipur, Meghalaya, Nagaland, Odisha, Punjab, Rajasthan, Sikkim, Telengana, Tamil Nadu, Tripura, Uttar Pradesh, Andaman and Nicobar Islands, D and N Haveli, Daman and Diu Lakshadweep could not spend any amount from the fund given.

For instance, The Prevention of Children from Sexual Offences Act⁴⁵ of 2012

44 Central Victim Compensation Fund (CVCF) available at <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1579539> (Last Accessed 22nd May, 2020).

45 POCSO Act, 2012 available at <http://indiacode.nic.in/amendmentacts2012/The%20Protection%20of%20>

is an important legislation which deals with cases of sexual offences and pornography involving children below the age of eighteen years. The Act refers to the completion of a trial, preferably within one year from taking cognizance of a case without granting unreasonable adjournments⁴⁶. The Act guarantees interim compensation to the victim of such crime in reference to the amount of injury⁴⁷ she has actually suffered. There cannot be any limitation⁴⁸ on the amount of compensation that is prescribed through the State Victim Compensation Fund. Besides this, the Act also mandates in non-refusal in the registration of FIR, immediate medical aid/examination, recording of evidence through video conferencing, in-camera trial, non-disclosure of the identity of victims.

4.4 Role of societal violence on the victim:

It is the need of the hour that a study should be conducted targeting the cost of crime victimization. The study will take into consideration intangibles elements such as fear, pain, suffering, loss of innocence, and loss of social status besides the tangible aspects of loss of property, health care bills, and others. Violence and exploitation in schools and workplace is another reason or can be said as a contribution of the society towards victimization. In order to curb the societal violence upon a victim of the society,⁴⁹ first, there is a need to recognize the pain and the suffering, the victim of a crime has gone through along with taking into consideration their viewpoints. The expectation and the obligation must be understood from the injustices a victim has suffered. Discrimination of the victim and his immediate family must not be done on the basis of age, gender, caste, sex, culture, occupation, etc. or even based on the nature of the crime committed upon him/her. It becomes a severe issue in sexual offences where the victim is often secluded from the society which includes her workplace, neighborhood, and friends who often look down upon her. However, she was at no fault in the commission of the crime upon her, where it becomes essential for the different agencies of the criminal justice system to provide psychological, practical support to the victims. **Victim rights⁵⁰ can be narrowed down as under:**

1. Extending support services such as national helplines to ensure that proper help and support are immediately made available to the victims. These

Children%20From%20Sexual%20Offences%20Act.pdf (last visited 24th February, 2018).

46 Ibid, Section 35(2).

47 Rule 7(3) of the Protection of Children from Sexual Offences Rules, 2012.

48 Ibid.

49 Supra note 19.

50 Ibid.

models should be able to support all types of victims of crimes.

2. Children who may face difficulty in accessing the support must be extended help either from family or from professionals.
3. Society further needs to pay attention to the publication of inaccurate, imprecise, or careless information, which may make the victim's situation worse or will affect them psychologically and then physically.
4. There needs to be a statutory framework where the victims can make a complaint to the relevant agencies in case there is a breach of victim rights.
5. Victims of crime also should be able to access the reasons from the office of the prosecutor about to discontinue a prosecution or to proceed with a guilty plea to lesser charges.
6. Information regarding court dates, trails, retrials, sentencing hearings, and appeals must be made available statutorily.

Conclusion:

It is essential to mention that the family of the victim, often referred to as the second victim, is psychologically affected when the victim suffers injury. The injury sometimes can also take away the earning capacity of the person who is usually the last bread earner of his family, which causes longitudinal damage to the victim as well as his family. Overcoming all this will take time, but the first spreading of awareness in civil society is far most important to exercise like it is often said if you are useful, you can go through any thoroughfare.

The following are suggested:

1. Time has come to assess the present victim compensation schemes and find out whether the various stakeholders are well aware of such existing schemes.
 2. An institution can be formed that will assess and monitor the cases for which compensation is required or is pending as the present system of DLSA is found to be overworked who will have a 'victim support officer'.
 3. Institutionalization of the rehabilitative mechanism is another aspect that
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cannot be done singlehandedly by the Government. It is imperative that civil society also forms an important stakeholder.

4. Rehabilitation cannot only depend upon paying compensation to a victim. The psychological assistance is another area of concern which is absent.
5. Civil society also needs some essential powers which will allow them to function and not make the process more difficult where most of the time is lost in taking permissions.
6. A centralized authority should be formed where the victims can approach for availing their rights.

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