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Victim's Right to Access Justice Under Indian Criminal Justice System: An Appraisal

ZOYA FATIMA¹ AND SHARIQA MEHMOOD²

ABSTRACT

Human suffering in the form of any kind of victimization is as old as human civilization itself. Despite being an integral part of crime, victim still remained a 'forgotten entity'. The antagonistic approach of justice had worsened the plight of victim in our criminal jurisprudence. It is the demand of justice that when the governments are obliged to resort feasible measures for correcting and rehabilitating the offender, the victim must also be manifested with similar concern by providing at least adequate compensation for their misery, apart from satisfying the victim by the convicting the offender. It is very essential to provide the victim with central role otherwise their situation in criminal justice system remains discontent. The aim of this paper to analyze the status of victims under Indian criminal jurisprudence and what assistance are available to victims as a matter of right and what different rights which are available to victims in the whole process of criminal justice administration, along with the matter of legal aid and change in the trend of compensatory jurisprudence.

I. INTRODUCTION

*"For too long, the law has centered its attention more on the rights of the criminals rather than on the victims of the crime. It is high time we reversed this trend and put the highest priority on the potential victims."*³

Gerald R. Ford, President, USA (1975)

Crime has been a baffling problem since the inception of human civilization, its history is as old as human civilization itself. Earlier the crime

was committed against the individual but with the advancement of human civilization crime is no longer considered as an offence against the individual but it is now considered against the whole society and the state took upon itself to punish the offenders, and withhold all the rights to put sanction on defaulters. The logic hold within this philosophy is that it is the ultimate responsibility of state to persistently persuade the government to maintain peacefulness and

¹ Author is a Research Scholar at Department of Law, Aligarh Muslim University, India.

² Author is a Research Scholar at Department of Law, Aligarh Muslim University, India.

³ S.M.A QADRI, CRIMINOLOGY AND PENOLOGY 544 (Eastern Book Company 2005).

tranquility of the society.⁴ The criminal justice system has been bestowed with and enormously difficult task of prescribing criminal acts and sanctioning defaulters. Our criminal justice system busy with prescribing criminal acts and sanctioning defaulters has not done justice to victims.⁵ While performing such duty state in order to protect its citizen against any type of harm (either person or property), has unfortunately shifted its attention from victim to the offender. As our judicature is laboriously allude to the provisions regarding approbation of accused and therefore if offender escapes the punishment, the disgruntled victim suffers mental depression etc, which led the victim and their kith and kin become frustrated and later ensure a reaction in the form of internecine conflicts, inappropriate behavior, even forced to violate law in order to have the cynical satisfaction of retaliation. So, it becomes the duty of the state to make appropriate provisions for compensation for victim and also for their rehabilitation⁶ through passing specific legislation for the same.

Mere sentencing the guilty would not meet the end of justice, we see all over the world there are numerous laws which grant protection and welfare of the accused and welfare of the victim are not always protected. In majority of cases victims are not aware about the provisions of law which are available in their favor; as a result, they do not get the prompt legal as well as financial aid from the state.⁷ This further lead to delayed

action on the part of the state in the matter of their rehabilitation process and also for the provision about their security that too contributes in further deterioration of their social, educational, political and economic development.

Traditionally the victim's position in our judicature observes a which antagonistic approach to criminal justice has been limited to being a prosecutions-witness, despite the fact that it is the victim itself who suffers further impairment in the whole process whether it be the physical, mental, emotional suffering. In spite this drawback in the process of ensuring justice to victim, there are no statutory recognized right to the victim in the whole process of criminal justice system. Although there are some provisions which talk about the rights of victims but they are not sufficient. There is need of comprehensive legislation on the rights of victims. There are some prevalent provisions under Constitution and Criminal Procedure code, 1973 which deals with protection of victim's right and compensation but still victims have an insignificant role to play in the judicial process. Their status was further deteriorated by criminal courts by ignoring those provisions for a long time and their improper utilization throughout sentencing processes. Apart from the existing provisions, a substantial importance has been specified under the report put forward by the committee on Reform of Criminal Justice on the Need to Provide "**justice to victims of crime**". It states that "Victim-orientation includes greater

⁴ Shambhu Kewat and Anr, v. State of Rajasthan AIR 2014 SC 149.

⁵ Arnab roy, *Victim Compensation in Criminal Law, it's a Reality or Still a Myth?* 11 Vol. J.L.J 155, 156

(2017).

respect and consideration towards victims and their rights in the investigative and prosecution process, provisions for greater choices to victims in trial and disposition of the accused, and a scheme of reparation/compensation particularly for victims of violent crimes”.⁸ One of the countless reforms that are being proposed for the improvement of criminal justice system is a call for a victim-centred approach in criminal justice administration. The victim-centered approach has recently been shown again by law commission on India (2017) which recommended that public prosecutors should do “victim impact assessment” by consultation with victim of crime before saying no objection in the matters of grant of bail to accused.⁹ Justice to victims can only be possible through a synchronize endeavor of all the three organs of the government. Laws are being enacted with an objective of alleviating different form of threats to individual’s life and enforcement of their legitimate right. It is the drawback in our judicature that the victims and the dependents of the victim, restitution is still at evanesce point in our criminal jurisprudence due to lack of appropriate laws. This is the insufficiency of the administration of justice which has to be revised by the legislature.¹⁰ Justice Krishna Iyar shows his concern and expressed his views for the plight of the victim that “the criminal law in India is not victim oriented and the suffering of the victim often immeasurable is entirely overlooked in misplaced sympathy for the criminals. Despite the fact that our current criminal law is intended

to punish as well as reform criminals, it has failed to address the by-product of crime, namely the victim”.¹¹

II. PROBLEMS FACED BY VICTIMS

It is a very harsh reality of our criminal justice system that victim of crime victimized further due to the impact of its victimization on their social, emotional, economic condition and faces multifarious problems. In cases where head of the family was victim such family become totally disorganised and helpless in society. Faces many problems like lack of support from government, had to struggle a lot for want of justice due to our slow judicial process, in some cases inadequate compensation was the reason of their humiliation. Further the victim of crime like rape faces the social stigma, they are looked upon with hatred in society and even within family, facing such trauma make them frustrated and feeling inferiority to such an extent that their mental state was so defeatist of extreme degree that compelled to attempt suicide or change their behaviour adversely. In some cases, victim suffer physical impairment due to victimisation, they become totally dependent on others for their livelihood and sustenance for the rest of life. Apart from problem which they face in society, they are being further victimised due to the unsupportive nature of police administration, they are physically and mentally tortured by the police. Though if police were ready to help the victim, they are pressurised by their superior officers to close the case and tries to settle out by

⁸ K.L VIBHUTI, CRIMINAL JUSTICE 362 (Eastern Book Company 2004).

⁹ *Id* 362.

¹⁰ Rattan Singh v. State of Punjab AIR 1979 4SCC 719.

¹¹ *Id*.

bribing them or even the victim. "In its haste to improve the efficiency of prosecution and conviction, the criminal justice system does not always respond sufficiently to the problems and concerns of victims of crime".¹² Amongst the major failure of the criminal justice system, one which emerges quite prominently is "the indifference and unconcerned bordering shown towards the needs and problem of the victims. The impact of the criminal administration on victims is characterized as 'the second wound'"¹³. Meaning thereby that the first wound which victims suffers because of the crime which has been committed against them and secondly the neglected attitude towards victim which labelled as 'Secondary Victimization'. Corollary victims must not only deal with major injuries, but also with "secondary" injuries. Secondary injuries, sometimes known as "secondary victimisation," are injuries that occur as a result of the response of institutions such as the police and other governmental and non-governmental institutions, rather than as a direct result of a criminal act.

III. PROVISIONS UNDER INDIAN CONSTITUTION

The 'Rule of Law' is the cardinal attribute of the Indian Constitution¹⁴ and therefore criminal administration is obliged by the said rule. Indian Constitution takes maximal care and discretion to preserve everyone's rights; hence principles of victimology are well-established in Indian

constitutional law. When constitutional provisions are explored about the constitutional protection to victims of crime, several clauses under Indian constitution are found that support the notion of victim recompense. Several sub-sections of Indian constitution support the notion of victim recompense. The right to life and personal liberty is guaranteed, and the state is obligated for recompensing victims of criminal violence. Unlike the sections related to accused persons' rights, these clauses do not mention such rights explicitly; rather, they are implied. It is extensively believed and peradventurly justifiable also that the existing criminal administration is laboriously burdened dealing with provisions in respect of accused following the reason that accused is presumed innocent until be proved. The rights of an accused and convicted person are well protected by the country's Constitution and other laws, but the right to aid for victims of crime is completely overlooked by the law and lawmakers. Although, there are some constitutional provisions available which directly or indirectly speaks about the safeguards of the victims. These enabling provisions are listed below:

A. RIGHT RELATING TO "LIFE AND PERSONAL LIBERTY"¹⁵.

It brings forth that "no person shall be deprived of his life and personal liberty except according to the procedure established by law"¹⁶. The said article constantly expanded to include a variety of rights in its ambit. The extremely beguiling

¹² G.S BAJPAI, VICTIM IN CRIMINAL JUSTICE PROCESS: PERSPECTIVE ON POLICE AND JUDICIARY 8 (Uppal Publishing House 1997).

¹³ *Id at* 64.

¹⁴ *Kesavanand Bharti v. State of Kerala*, AIR 1973 SC 1461.

¹⁵ INDIA CONSTITUTION. Art.21.

¹⁶ INDIA CONSTITUTION. art. 21.

development under our Constitutional Jurisprudence is the elongated dimension designated to Article-21. The right to life cherished in Art-21 has been generously elucidated to imply something other than mere animal existent,¹⁷ accordingly it incorporates all those facets which go to makes life purposeful, proper and worth living,¹⁸ that is being so right to life and personal liberty comprises an inalienable right to live with dignity. It mandates the state to attend to the sovereign business of providing the required infrastructure so that its criminal justice system can meet the mandate of Indian Constitution.¹⁹ Whenever the state acts up to protect the victim, Article 21 has also directed it to provide interim compensation as a remedial measure. It has been often used to provide solace to rape victim²⁰ and converting the fine imposed into compensation. The Apex Court held that the victim of rape can receive interim compensation before the culprit is convicted. The Apex Court held that the victim of rape can receive interim compensation before the culprit is convicted.²¹

The aforesaid provision also provides for the Right to Medical Care,²² the Apex Court has contemplated a very major problem that exists in medico-legal case, the doctor ordinarily refuse to give expeditious assistance to victims until all the legal formalities were settled. There are many cases reported where victim died awaiting the

conclusion of medical formality relating to legal issues. The court therefore now said unequivocally that the protection of life is of the utmost urgency. Aside from that, the court has emphasised a very important point, namely, that the state cannot claim a lack of financial resources to carry out these orders aimed at providing proper medical care to the people.²³

B. ARTICLE 41

The Indian constitution establishes the legal framework for state assistance in the event of citizens' disablement arising out of causalities²⁴. It requires the state to establish adequate arrangements for "securing the right to public assistance in instances of disability and other unjustifiable need".²⁵

C. ARTICLE- 51(c)

Article 51 (c) of the constitution of India employs a similar idea when it says that the country has to foster respect for international laws and has to abide by its treaty obligation. These are myriad international conventions which require the member state to enact laws for providing compensation to the victims.

IV. RECOMMENDATION OF MALIMATH COMMITTEE ON REFORM OF CRIMINAL JUSTICE SYSTEM

This committee was constituted by department of Home Affairs which also takes initiative in order

¹⁷ *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295.

¹⁸ M.P JAIN, *INDIAN CONSTITUTIONAL LAW* 1158 (Lexis Nexis 2014).

¹⁹ *Kalpna v. State of Maharashtra and others*, 199 3 Mah L.,J. 483.

²⁰ *Satya Pal Anand v. State of M.P.*, AIR 2014 4SCC 800.

²¹ *Sabeeha Faikage v. Union of India*, AIR 2013 1SCC

262.

²² *Parmanand Katara v. Union of India* AIR 1989 SC 2039.

²³ *Khatari v. State of Bihar*, AIR 1981 SC 928.

²⁴ *N.K.V.Bros Pvt Ltd v. M. Kuamri Ammal and Ors*, AIR 1980 SC 457.

²⁵ *Suresh v. Haryana*, AIR 2015 2SCC 227.

to protect victim's interest under criminal justice system. One of the main concerns of state was that people were losing faith in the system as the victims feeling were not noticed and are constantly whimpers for attention. The committee throws light on the issue of victims that they were not provided with those various legal rights and protection to which they deserve. Furthermore, the victims were subjected to secondary victimization by state agencies. It has also been found that state itself being a victim in criminal law had caused the shifting of attention from the victim to the state.²⁶ The committee stated in its report that ensuring victim justice is an essential goal of the criminal justice system, but the victim has been denied any substantive rights, including the opportunity to take part in criminal proceedings. The committee proposes that two rights be recognised in order to change their status: (i) the ability to take part in criminal processes, and (ii) the right to seek recompense for injuries incurred.

Following are the recommendations of the Malimath Committee:

1. "The victim should be allowed to participate in cases involving serious crimes and also be given adequate compensation.

2. If the victim is dead, the legal representative shall have the right to implead himself or herself as a party, in case of serious offences.

3. The State should provide an advocate of victim's choice to plead on his/her behalf and the cost has to be borne by the State if the victim can't afford it.

4. Victim compensation is a State obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organised in a separate legislation.

5. A Victim Compensation Fund can be created under the victim compensation law and the assets confiscated in organised crimes can be made part of the fund".²⁷

6. In all serious crimes the state is obliged to provide compensation to the victim of crime, despite the fact whether accused has been apprehended or convicted or not. For that purpose a separate legislation has to be passed by the parliament. The Indian Society of Victimology has offered a draft bill on the subject in 1995, which provides a framework for consideration.

V. LAW COMMISSION REPORT ON VICTIMS

Tracing the history of Law Commission on victims, the 41st Report of Law Commission of India finds its first mention. Under this Law Commission sec- 545 of criminal procedure code was extensively discussed which stated that:

²⁶ MINISTRY OF HOME AFFAIRS, REPORT OF THE COMMITTEE ON REFORM OF CRIMINAL JUSTICE SYSTEM (MINISTRY OF HOME AFFAIRS 77 (2000).

²⁷ K. Deepalakshmi, *The Malimath Committee's recommendations on reforms in the criminal justice*

system in 20 points, The Hindu (Jan. 17, 2018), <https://www.thehindu.com/news/national/the-malimath-committees-recommendations-on-reforms-in-the-criminal-justice-system-in-20-points/article22457589.ece>.

The Court may issue an order that "in the payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court."²⁸ The term "substantial" emerge to be employed to rule out circumstances in which only nominal damages are attainable. The Indian Government submitted the Code of Criminal Procedure Bill, 1970, based on the Law Commission's suggestions in the aforementioned report, with the goal of introducing section-357 while modifying section 545. Section- 365 [now Section 357] which corresponds to Section 545 provides for paying compensation to victims.

The Law Commission's 154th Report was based on the 1973 Criminal Procedure code. Law commission in its 154th report taken on the task of revising the Code of Criminal Procedure in its entirety. The Law commission under the chairmanship off Justice K. Jayachandra Reddy did a commendable job in enlisting comments to all the major section of the code. 'Victimology' as a concept has been dealt with specifically in chapter 15 of the Report. Enumerating a brief history of the compensation jurisprudence all over the world, the report continued to say that a principle of victimology has foundation in constitutional jurisprudence of India.²⁹

The 2008 revisions to the Code of Criminal Procedure placed a strong emphasis upon the victim's right in criminal proceedings, especially in cases involving sexual harassment.

Commission inserted new Section to criminal procedure code which empowers the Court to direct the State in order to recompose the victim in such cases where "the compensation awarded Under Section 357 is not adequate for such rehabilitation or where the case ends in acquittal or discharge and the victim has to be rehabilitated".³⁰ Section 357A deals with victim compensation scheme which provides that:

1. "Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who, require rehabilitation.

2. Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1)

3. If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

4. Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the

²⁸ The Code of Criminal Procedure, 1898(s 545 (1)(b)) 'Act of Parliament', 1898 (India).

²⁹ HASTING *supra* note 24.

³⁰ The Code of Criminal Procedure, 1898(357A (3)) 'Act of Parliament', 1898 (India).

District Legal Services Authority for award of compensation.

5. On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

6. The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer incharge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit³¹.

The significance behind awarding compensations to the victims is to restore the loss suffered by the victim. If a sole bread earner of the family has been murdered, it will be immaterial how rigorous or lengthy imprisonment has been imposed upon the accused, by doing this only the vengeance feeling can be satisfied, so in order to secure the family's interest, the means is awarding compensation to the victims. Compensation therefore has assumed immense significance in the criminal justice system. It lies on the shoulders of the offender to make good any resultant injury to the victim. However, if the criminal is unable to compensate the victim due to the indigent circumstances, then the victim

must be indemnified by the state as it has failed to safeguard the interest of its subject.

VI. VICTIM'S RIGHT UNDER CRIMINAL LAW OF INDIA

Before analysing various rights of victims it would be pertinent to mention one of the most important amendments made under the code wherein first initiation was taken to define the term 'victim' in a wide expression. It provides that the term '**Victim**' means "a person who has suffered any loss or injury caused by a reason of the act or omission for which the accused has been charged and the expression 'victim' includes his or her guardian or legal heir".³² While the expression 'any loss or injury' "is an expansive expression used in the context of the person whose suffering is direct and proximate result of the crime".³³

The expression victim thus "has to be understood in a comprehensive and inclusive sense and not in a narrow sense of being an individual victim. It must include a collectively comprising a group, a class or community of person racial, economic, political or religious to whom harm, damage, loss, injury have been caused by individual wrongdoer or group including person or person in lawful authority by abusing his or their powers".³⁴

Now it is worth to discuss various rights available to victims under criminal procedure code

³¹ *Id.*

³² The Code of Criminal Procedure, 1898(s 2 (wa)) 'Act of Parliament', 1898 (India).

³³ Prakash Chandra Mishra, *Victim Compensation*

Scheme: An Aspect Of Modern Criminology, Cri.L.J 136, 137(2014).

³⁴ J.S. Rajawat, *Victim Participation in Criminal justice system*, Cri.L.J 56, 56 (2012).

1. Appointment of an Advocate - The present legal system propounds that only the state selected counsel with the appropriate person to plead in favor of the victim. The code, on the other hand, does not completely bar the victim from taking part in the criminal justice system. An advocate appointed by the victim can act as the assistant to the public prosecutor in a restricted capacity in the conduct of the trial but with the sanction of the court. The court authorizes the victim to submit arguments after the conclusion of evidence. By the permission of the court the victim has the right to engage an advocate of his choice in order to assist the special Public Prosecutor.³⁵ The objective to be achieved through this clause “is to give active participation of victim in dispensation of criminal justice”.³⁶

2. Providing protection to the victim of Rape – In order to provides protection to the victims of rape Cr.P.C a proviso has been inserted which provides for any crime which are committed under sections-376, 376A to 376E of Indian Penal Code “to be tried as far as practicable by a court presided over by a women”.³⁷ furthermore another proviso had been inserted in relation to provide safety measures for recording evidences during investigation process relating to rape cases, whereby “recording of statement of the victim shall be conducted at the

residence of the victim or in place of her choice and as far as practicable by the woman police officer in the presence of her parent or guardian or near relative or social worker of the locality”.³⁸ Another sub-section has been inserted vide 2009 amendment which provides that “the investigation in relation to a rape of child may be completed within 3 months from the date on which the information was recorded by the officer-in-charge of the police station.”³⁹ lastly one more proviso has been added to ensuring protection to victims of rape cases is “that a woman Judge or Magistrate should conduct the in-camera trial.”⁴⁰ According to the guideline provided by the Supreme Court⁴¹ The victim's confidentiality must be preserved in all rape cases to the extent possible. The victim must be informed of her right to an *in camera trail* and she must demand for the same to protect her identity.

3. Victim's right of appeal- Victim has the right “to prefer an appeal against any order passed by the court acquitting the accused or convicting the accused for lesser offence or imposing inadequate compensation, and such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court”.⁴²

4. Protection to Witnesses - A new Section was added to allow witnesses or anybody

³⁵ The Code of Criminal Procedure, 1898(s 24(8)) ‘Act of Parliament’, 1898 (India).

³⁶ Delhi Domestic Working Women's Forum v. Union of India and others, AIR 1995 1 SCC 14.

³⁷ The Code of Criminal Procedure, 1898(26(a)) ‘Act of Parliament’, 1898 (India).

³⁸ The Code of Criminal Procedure, 1898(s 157) ‘Act of Parliament’, 1898 (India).

³⁹ The Code of Criminal Procedure, 1898(s 173(1A)) ‘Act of Parliament’, 1898 (India).

⁴⁰ The Code of Criminal Procedure, 1898(s 327(2)) ‘Act of Parliament’, 1898 (India).

⁴¹ HASTING *supra* note 34.

⁴² The Code of Criminal Procedure, 1898(s 372) No. 2 ‘Act of Parliament’, 1898 (India).

acting on their behalf to register complaints in respect to an offence.⁴³

5. Transfer of cases – For a fair trial in a case it is necessary that the victim and witnesses of the prosecution are under no intimidation or influence. Sometimes, in the ends of justice, the place of trial needs to be shifted from its ordinary place. With the prior consent of prosecution and accused for the convenience of parties the court may sit at the place other than its normal place of sitting for examining the witness or for disposing off the case.⁴⁴

6. Compensation Scheme – In India, the Code of Criminal Procedure establishes the legal basis for compensatory relief for victims of crime. Provisions for compensation for crime victims are also provided for in the Probation of Offenders Act of 1958 and the Motor Vehicle Act of 1988. In addition to these statutes compensatory scheme can also be found in the form of Supreme Court judgments. The provision to compensate the victims of crime⁴⁵ is not a recently introduced under the Code of Criminal Procedure, 1973. Even the old Code of Criminal Procedure of 1898 provides for compensating victims of crime⁴⁶ which deals with social purpose and to be applied in suitable cases. But as the law commission noted in its 154 Report⁴⁷ “Our courts did not exercise their

statutory power under this section as freely and liberally as they could be desired. The commission favored payment of compensation out of the fine imposed on the offender”.⁴⁸ Accordingly, the commission recommended for inserting substantive provision in order to give power to the trial court for compensating the victim. The Commission observed:

*“We think, however that the penal code should give prominence to this aspect of compensating the victims of the offender out of the fine imposed on the offender. At present, the legal provision in this regard is tucked away in the last miscellaneous chapter of the code of criminal procedure. It seems to us that, as a substantive power of the trial court, it deserves to be mention specifically in the penal code chapter on punishment along with the provision relating to fines”*⁴⁹

The court has the authority to pass order to recompose the victim out of the fine which are imposed upon accused.⁵⁰ Clause (1) and (3) of section 357 and sub sec-(4) endow power to the trial court and appellate or revisional court respectively for awarding compensation to victim of crime. It also covers the hirers and dependents of victim for compensation.⁵¹ The compensation ordered by the court that has to be paid under section 357(1) is for injury suffered or

⁴³ The Code of Criminal Procedure, 1898(s 195A) No. 2‘Act of Parliament’, 1898 (India).

⁴⁴ The Code of Criminal Procedure, 1898(s 9 (6)) No. 2‘Act of Parliament’, 1898 (India).

⁴⁵ The Code of Criminal Procedure, 1898(s 357) No. 2‘Act of Parliament’, 1898 (India).

⁴⁶ The Code of Criminal Procedure, 1898 (s 357) No. 2‘Act of Parliament’, 1898 (India).

⁴⁷ LAW COMMISSION OF INDIA, REPORT NO. 154 THE CODE OF CRIMINAL PROCEDURE 86

(1973).

⁴⁸ BHARAT. B. DAS, *RESTORATIVE JUSTICE AND VICTIMS: RIGHT TO COMPENSATION* 44 (Serials Publications 2008).

⁴⁹ *Id.* at 45

⁵⁰ The Code of Criminal Procedure, 1898(s 357) No. 2‘Act of Parliament’, 1898 (India).

⁵¹ The Code of Criminal Procedure, 1898(s 357(1)(c)) No. 2‘Act of Parliament’, 1898 (India).

loss caused due to death or destruction of property respectively, even if no fine was imposed on the offender the court has the power to pass an order against the accused to pay compensation to victim.⁵²

Although despite such provisions for compensation to the victims, the Supreme Court admonishes the high court and the trial court for non-application of section 357 of Cr.P.C said:⁵³

“..... the victim would remain the forgotten in the criminal justice system if despite the legislature having gone so far as to enact specific provisions relating to victim compensation, the court chose to ignore the provision altogether and do not even apply their mind to the question of compensation. If follows that unless section 357 is read to confer an obligation on the courts to apply their mind to the question of compensation, it would defeat the very object of the introduction of the provision.”

Latter on following the guideline of the 154th Law Commission Report, a new provision in the form of section 357 A was added to the Code of Criminal Procedure, 1973, which directs the state government and the central government to work in co-ordination so as to develop a scheme which provides funds in order to provide compensation to the victim and dependent and even for those victims who requires rehabilitation. The victim's right of recompense no longer depends on extraneous factor like capacity of the offender to compensate. Although, the added provision in

the code came into force in 2009, it took some time for the courts to shrug the hesitance and start using this provision liberally.

Arun Bora v. State of Assam⁵⁴ is the first reported case in which the use of section- 357A was recorded. While convicting the appellants of the offence of murder, the court proceeded to grant compensation to the victims. As the offender was not in the capacity of paying an equitable compensation, the court asked the State Government to deposit an amount of Rs. 50,000 to be paid to the dependents of the victim under section 357A of Cr.P.C.

Treatment of victims- In 2013 one more provision was introduced in Cr.P.C which provides a right to victims for treatment. this provision provides that all hospitals government or private, are obliged to come up with immediate medical assistance to victims, free of cost, and are also obliged to inform the police immediately about the same.

7. Right in other statute:

- **Legal aid:** the provision for legal aid exists in the legal services Authority Act, 1987. It provides that following persons are entitled to legal service aid to defend the case if he is a:⁵⁵
 - i. “A member of scheduled Caste or Scheduled Tribe
 - ii. A victim in trafficking in human beings or beggar

⁵² The Code of Criminal Procedure, 1973 (2 of 1974), Section 357(3).

⁵³ *Ankush Shivaji Gaikwad v. State of Maharashtra*, AIR 2013 6 SCC 770.

⁵⁴ 2012 SCC online Guw. 392.

⁵⁵ The Legal Services Authority Act, 1987(S 12) No.39 'Act of Parliament' (India).

- iii. A woman or a child
- iv. Disabled person
- v. Victim of mass disaster, ethnic violence, caste atrocity, flood, earthquake etc
- vi. Industrial workman
- vii. Person in custody”⁵⁶

The person who satisfies any of the criteria mentioned above are entitled to claim legal services after the satisfaction of the concerned authority that such person fulfils the criteria for the same.⁵⁷

- **Confidential Identity of Victim:** - The Hon’ble Apex Court had taken note for securing the identity of the victim by making their name not to be disclosed in judgments court declares it offensive to disclose the identities of victims of rape.⁵⁸

VII. CONCLUSION

Thus, it is widely recognized in India that despite having various provision stated as a result of the recommendations various law commissions Committees, which speaks directly or indirectly about the rights of victims but the failure of the system is that there no express legislation is enacted which deals and ensure the rights of victims specifically in our criminal justice administration. This leads to disengagement in the proceedings and, as a result, distorted criminal justice administration. It should be noted that any change towards the betterment of

the victim can be achieved only through presenting genuine reforms in law and by enforcing such laws effectively. While recognising the victim’s right to take part in criminal justice process, the state has to enact a comprehensive Victim’s Right Bill in order to recognise their basic rights. Despite having various provisions at national (brought by amendment in 2008) and even at international level also, victims are not provided with proper status which they actually deserves. Still there is a gap between the enactment of laws and the purpose for which they are enacted. There is a need to infuse this gap and so that the existing lacunas can be removed. Apart from this they are being further tortured and humiliated during the whole process of acquiring justice. There is something lacking behind in our law that has pointed out to meet the end of justice. Justice is a kind of truth in action, and ignorance is its foe. Therefore, being a part of the criminal justice system, a victim has the right to social justice as outlined in our constitution.

⁵⁶ Id.

⁵⁷ The Legal Services Authority Act, 1987(S 13(1)) No.39 ‘Act of Parliament’ (India).

⁵⁸ The Indian Penal Code, 1860 (S 228A) No.45 ‘Act of Parliament’(India).