

Jurisprudential analysis of victimization :Need of Restorative theory and State Compensation in Indian Criminal justice system

Himanshu Kamal Tripathi¹ & Vishalakshi Singh²

Abstract

In the current decade, role of victim of a crime in our criminal justice system is restricted as a witness in the proceedings this gives a negative thought to the victims who has suffered loss, physical and mental injury, economic loss, emotional loss and infringement of their fundamental rights. There is substantial need to assist the victims of crime in monetary terms. Simply punishing the wrongdoer doesn't complete the wheel of criminal justice system. What about Victims? In modern times it is very important for every criminal system that it focuses on the Victimology. Monetary assistance or compensation to the victims is of great significance because with this we can balance the social cost in form of harm, physical damage, and mental trauma that Victims suffer during and after the crime especially for the pauper. We have seen in many circumstances that the state is taking appropriate actions and measures for the rehabilitation of criminals and accused is protected in all the resources funded by the state while pauper victims are helpless , left behind to fend for himself without any support from the state and authorities. This paper tries to highlight the inefficiency of important provisions of State compensation theory and need of restorative theory in India.

Introduction

Aim of theory of Crime and Punishment is two answer two questions, “What acts should be punished?” and “To what extent?” The first question asks for the distinguishing criteria of a

¹B.A.LL.B (Hons.), 2ndYear, College of Legal Studies, University of Petroleum & Energy Studies, Dehradun, Uttarakhand, India; Himanshukamal.tripathi@gmail.com.

²B.A.LL.B (Hons.), 2ndYear, College of Legal Studies, University of Petroleum & Energy Studies, Dehradun, Uttarakhand, India; Singhvishalakshi93@gmail.com.

crime, and the second question asks to calibrate punishments³. Throughout this article we have tried to highlight some of the problems attached to theories attached to punishments and lack of victimology in Indian criminal system. Apart from the theories of crime and punishment we will also focus on the economic analysis of the crime and punishment. The application of economic analysis to criminal law is based on the proposition that economic efficiency is useful for examining and designing rules and institutions.⁴The Indian Criminal Justice system is based on the British model. The judiciary is independent for conducting fair trial and justice to both, the accused and the victim of crime. Therefore, it requires balancing of interest of accused and the victim. The accused when are prosecuted and found guilty are sentenced to jail but this does not complete the process of criminal justice because the crime victim still suffers. Crime cause financial, physical and psychological loss to the crime victim. Traditionally, it may have been sufficient that the criminal is caught and punished. But, the modern approach is to also focus on the victims of crime.⁵ The victim has no right under criminal justice system. A victim is only a witness for the prosecution. The recent shift in concern for the rights of accused to the rights of victim balance the interest of both the accused and victim. According to justice Krishna Ayyar:

“It is a weakness of our jurisprudence that the victims of crime and the distress of the dependents of the prisoner do not attract the attention of law. Indeed, victim reparation is still the vanishing point of our criminal law. This is a deficiency in the system which must be rectified by the Legislature. We can only draw attention in this matter.”⁶

Though no separate law for victims of crime has yet been enacted in India, the silver lining is that victim justice has been rendered through affirmative action and orders of the apex court.⁷ Over dependency in criminal system in India to manage the social concerns failed to achieve the other important concern that criminal system should achieve for which it is supposedly intended: honoring the emotions and interest of the victims, and prevent crimes. In fact, criminal proceedings routinely re-traumatize victims of serious crime through a

³Cesare Beccaria, *An Economic Theory of Crime and Punishment*, ON CRIMES AND PUNISHMENT 64 (1764) <https://bspa.berkeley.edu/access/content/group/0fa026cf-05f9-411d-bdca-6e09ac97bde1/Aug%2027%20-%20Readings/M12_COOT0650_SE_06_C12.pdf> .

⁴NUNO GAROUPA, *An Economic Analysis of Criminal Law*, Universidade Nova de Lisboa Revision, June 2001

⁵Status of the Victim in the Criminal Justice System, <<http://dcsiwan.bih.nic.in/Report/crime%20victims.pdf>>

⁶ Justice Krishna Ayyar; *Ratan Singh vs state of Punjab* AIR 1980 SC 84

⁷Chockalingam, K., *Measures For Crime Victims In The Indian Criminal Justice System*, <http://www.unafei.or.jp/english/pdf/RS_No81/No81_11VE_Chockalingam.pdf>

prosecutorial process that fails to provide promised closure or emotional repair to aggrieved persons.⁸Intangible cost that is, indirect losses suffered by crime victims such as pain and suffering, societal neglect, decreased quality of life and psychological distress is one of the important aspect that is many a times left unanswered. The victims in crime such as rape, sexual assault, face disfigured by throwing of acid and indecent exposure suffer avoidance of people and social withdrawal. Thus, there is the need of maintaining the social cost of such crime victims. The criminal law must work on the restitution of crime victims to their original position. We have been giving so much of time an importance to the accused rights but now its time to be concerned for crime victim's right. Many countries have provided legal as well as financial assistance and are making efforts in helping them to recover them. In India scenario is even worse. Victims have no right their situation in criminal justice system is inadequate, pessimistic and requires attention of concerned authorities. In India rate of conviction is very low and that too convictions can be sent in appeal and revision. The final judgment takes a long process and the victim meanwhile is subjected to mental agony and emotional distress. The crime victims lose all hopes getting justice. Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.⁹

International Approach

Recently, many countries are working towards providing assistance and support to the crime victims. US, England, Australia, Canada, South Africa, New Zealand, France are few of them. It has been realized that to provide psychological and social help to the crime victims, Restorative justice, Reparation, and institutions working for the rights of the crime victim is very much necessary. In mid 1980's, the UN approved the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in General Assembly Resolution 40/34 dated 29th November 1985.¹⁰

⁸ Allegra M. McLeod, *Confronting Criminal Law's Violence: The Possibilities of Unfinished Alternatives*, *UNBOUND* Vol. 8: 109, 2012-2013.

⁹ *Supra* n. 1.

¹⁰ *Crime victims: international and Serbian perspective*, pg 32

'victims of crime' are persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative in Member States, including those laws prescribing criminal abuse of power.

It includes fundamental principles such as right to access to the trial proceeding and treating the victims fairly, right to compensation from the offender or state, right to legal, psychological, social and medical assistance. These rights require that victims receive respect and are not humiliated by the police or the offender, the information regarding the proceeding is received by the crime victims and there should be protection of their private and physical safety. The court should also try to meet the needs of the victim.

To provide assistance and support to the victims, the Ministers of the Council of Europe in 1987 made recommendations which are not binding on the states but provide the guidelines.¹¹ The recommendation included surveys to understand the impact of crime on victims and remedies that can be provided; protection from the offender; psychological, medical and social help to the victim and information regarding their rights in the criminal justice system. Certain other convention came up such as in 1983; the compensation should be given to the victim and relative of victim of a violent crime by the state if any other source is not available, in 1985; guidelines provided including responsibility of the authorities to provide help and support to the crime victims such as giving information, protection and compensation, in 1987; to provide support to crime victims and prevention of crime.¹²

Criminal Justice System should come up with new methods to provide justice to the crime victims and to safeguard their interest. It should aim to provide such long and necessary assistance to the crime victims that they come back to their previous, active lives. Restorative justice is one of the ways to help the crime victim in order to bring them in the same condition as if the crime has never occurred. In 2002, the UN Commission on crime prevention and criminal justice recommended the restorative justice in the criminal justice system.¹³ In order to bring the offender and the victim at par, the restorative justice is necessary. Many countries, such as

¹¹ Crime victims: doing justice to their support and protection, p 27

¹² International and Serbian perspective, p 33

¹³ Supra note 9 p30

Canada, New Zealand, Australia and South Africa practice it. Restorative justice brings the offender and the victim closer. The offender apologizes to the victim, which gives little satisfaction to the victim and the offender's guilt directs that he will not repeat the crime. The offenders are required to repair the damage they have created to the victim.

A crime victim should be compensated no matter what the source is. First, the court should direct the offender to compensate the crime victim and if not successful then the state should compensate the crime victim. It is the duty of the state to prevent crime and protect people and property. If the state fails to prevent crime then, the state is liable to pay compensation to the victim. According to Jeremy Bentham, due to the presence of the social contract between the state and the citizen, victims of crime should be compensated when their property or person was violated. Thus modern approach of victimology acknowledge that a crime victim has right to be adequately compensated, rehabilitated and repaired irrespective of identification and prosecution of offender and the payment of such compensation should be made by state.¹⁴ Not only should the Criminal Justice system provide economic support but also legal, psychological and social support to the crime victims. France not only provides reparation to the crime victims, but its national organization; L'Institut National d'Aide aux Victimes et de Médiation (INAVEM) provides support to the family members of the victim, information to the victims, psychological help, social support and work for the rights of the victim.¹⁵

Indian approach

The Indian Constitution has several provisions which highlights the principle of victim compensation. The constellation of clauses dealing with Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) laid the foundation for a new social order in which justice, social and economic,

¹⁴ STATUS OF THE VICTIM IN THE CRIMINAL JUSTICE SYSTEM *available at* <http://dcsiwan.bih.nic.in/Report/crime%20victims.pdf>

¹⁵ <http://www.bdsp.ehesp.fr/reseau/inavem/>

Would flower in the national life of the country (Article 38).¹⁶ Article 41, which is directly related to victims, declares that state shall enact effective provisions for “securing public assistance in cases of disablement and in other cases of undeserved want”. Under Article 51-A it is a fundamental duty of citizens of India “to protect and improve the natural environment ... and to have compassion for living creatures” and “to develop humanism”. If liberally interpreted and properly expanded we can find the constitutional beginning of victimology under Article 21 on Indian constitution. We can easily establish the fact that “no person shall be deprived from his life and liberty without the procedure established by law” means that if anyone is deprived of his life and liberty without the procedure established by law it is responsibility of state to compensate victims properly.

It's been quite a time when several amendments were made in criminal laws which gave some rights to crime victims at different levels of justice system but when it comes to status of Victim is concerned it needs attention of legislature. Except in few matters, victim is not a party in criminal revision petitions, appeals or writs filed by the accused.¹⁷ A crime victim has right to oppose the release of accused on bail but he has no right or status to be informed if bail is filed. His evidence is necessary for recording conviction of accused but he need not be informed for hearing on the point of sentence. He is entitled to get compensation but before determination of compensation, he has no vested right to be heard.¹⁸

Need of compensation to Victims

“If a man has committed robbery and is caught, that man shall be put to death. If the robber is not caught, the man who has been robbed shall formally declare what he has lost . . . and the city . . . shall replace whatever he has lost for him. If it is the life of the owner that is lost, the city or the mayor shall pay one maneh of silver to his kinsfolk.” (Sections 22-24)¹⁹

¹⁶Murugesan SRINIVASAN & Jane EYRE MATHEW, Victims and the Criminal Justice System in India: Need for a Paradigm Shift in the Justice System

¹⁷ Supra n. 1

¹⁸ Supra n. 1

¹⁹ The Hammurabi code, in ancient Babylonia. The idea of providing reparations to victims of crime through civil redress – either through restitution from offenders to victims or state compensation programs – has a long

Ancient Babylonian thought was well accepted in England in the Anglo-Saxon period of the seventh century.²⁰ The Kentish laws of Ethelbest contained specified amounts of compensation for a large number of crimes ranging from murder to adultery. In the early Common Law of Middle England, if a man was murdered, the victim's family was entitled to a wergild of four pounds.²¹

In recent years victim compensation in the United States has often been viewed as a step-child in the world of victim services and assistance. It emerged independently, operated for many years separately from service networks, and seemed to address different issues and problems.²² But compensation to victims was a key step in in Victim assistance movement. Part of the problem in perception might be traced to the fact that much has been written through these years about the structure and function of victim compensation. But little attention has been paid to the fact that victim compensation is a form of victim assistance in meeting financial, physical, emotional and social needs of victims, and has played a vital role in victim recovery. Even less attention has been paid to the possible role victim compensation can have in future victim assistance efforts.²³ Victim compensation can also be seen as an alternative for of justice for Victims. European experiences are best examples for world because they express complete different views in relation to victim compensation. **Criminal Injuries Compensation Act, 1995** which was passed in UK makes it mandatory for the secretary of the state that it responsibility of state to make necessary arrangements for the compensation of Victims and shall also make arrangements for the payment of compensation to or in respect of persons who have sustained criminal injury. Section 9(4) of the Act stipulates that sums required for the payment of compensation in accordance with the Scheme shall be provided by the Secretary of State out of money provided by Parliament. So, the funding is by the State and not by the offender.²⁴

History of support.

²⁰ Anglo-Saxon England refers to the period of the history of the part of Britain that became known as England.

²¹Victims' Rights and Remedies, available at http://www.sagepub.com/upm-data/44554_4.pdf.

²² Marlene A. Young, The Role of Victim Compensation in Rebuilding Victims' Lives, available at <http://www.iovahelp.org/About/MarleneAYoung/RoleOfVictComp.pdf>

²³ Id

²⁴Criminal Injuries Compensation Act, 1995

Consequently, **The Criminal Injuries Compensation Scheme (2001)** was framed in U.K which, inter alia, specifies the standard amount of compensation payable in respect of each type of injury and compensation is payable irrespective of the criminal being apprehended or not and independent of the trial of the accused.²⁵

Right of restitution to Victims of crime are still absent in statues in India. In several cases, courts refused the prayers of Victims for loss of life, apart from that courts are under the Constitution have a duty to examine the loss of victims and their pleas to redress the problem they suffered during violent communal clashes. Principle that evoked is “culpable inaction “ under which state and other agencies are under obligation to compensate the victims of crime and their legal heirs or guardians in circumstances where Victim have no control.²⁶ However the very pessimistic approach was seen by Indian courts where they awarded compensation only when or directed the state to compensate victims when the state was at some fault. In *ShriLaxmi Agencies v. Government of AP* AP High Court refused to award compensation to victims for loss of life, destruction and loss of property and contended that only when some state or any authority of state fails to act diligently under the law and if that results in to culpable inaction, state is liable to compensate. Furthermore Court said that if direct nexus of for damage suffered and state action is absent then Article 21 is inapplicable.²⁷

Amendment in CrPC which was made in pursuance of recommendation made by Law Commission in its Forty-first Report (1969) brought the new dimension if this approach. Specific provisions were added in section 357 where Courts may award compensation at the time of giving judgment to the Victims at particular cases for delivery of justice. After that in 152nd law commission report they recommended that Sec 357-A needs to be added in CrPC where compensation should be awarded at the time of sentencing the wrongdoer. Report further mentioned that state should compensate victims by giving Rs. 25,000 at the time of sentencing of wrongdoer in case of bodily injury and in case of death compensation must be Rs.1, 00,000²⁸.

²⁵ STATUS OF THE VICTIM IN THE CRIMINAL JUSTICE SYSTEM available at <http://dcsiwan.bih.nic.in/Report/crime%20victims.pdf>.

²⁶ Right of victims in indian criminal justice system , S murlidharan

²⁷ Id

²⁸ 152nd Report of Law commission on custodial crimes.(1993)

Further Law commission realized that even after making recommendations in previous report it had not been implemented properly, In their 154th report again, they recommended that it is necessary to incorporate section 357-A in CrPC to provide a comprehensive scheme of compensation to Victims.²⁹

Section 2(wa) of CrPC define Victim not only the one who suffered loss due to acts of another but also includes victim's guardian and legal heirs. So intension of the legislature is clear that they completely want to compensate the victims even if the accused is not convicted and also,if possible, the legal guardian and heirs of victims. Similar provisions can also be seen in **The Probation of Offenders Act, 1958**, but these provisions are only applicable when the offender is released on probation. Well, as we all know compensation these provisions are only awarded when there is conviction of the offender and only 10 % of people out of accused are convicted in India because of several provisions of appeal and revisions. So ultimately inadequate provisions and delay in justice completely destroys the purpose of enacting such laws. The other statutes in India making provisions for compensation to victims are **Works Man Compensation Act, Fatal Accidents Act, Moter Vehicles Act and Domestic Violence Act**, which provides that wrong doer or his master should pay compensation to victims³⁰. Bihar Victim Compensation Scheme 2011 are welcoming steps where the responsibility of state for compensation and rehabilitation of victim irrespective of identification and prosecution of accused have been acknowledged.³¹

Restorative Justice

“Restorative justice is a theory of justice that emphasizes repairing the harm caused by criminal behaviour. It is best accomplished when the parties themselves meet cooperatively to decide how to do this. This can lead to transformation of people, relationships and communities.”³²

The aim of Restorative Justice is to make the offenders aware of the harm caused by the crime, their responsibility to repair the harm caused and provide relief to the victims. Restorative Justice

²⁹154th Report of Law Commission on the Code of Criminal Procedure 1973. (1996)

³⁰STATUS OF THE VICTIM IN THE CRIMINAL JUSTICE SYSTEM available at <http://dcsiwan.bih.nic.in/Report/crime%20victims.pdf>.

³¹STATUS OF THE VICTIM IN THE CRIMINAL JUSTICE SYSTEM available at <http://dcsiwan.bih.nic.in/Report/crime%20victims.pdf>.

³² Restorative justice briefing paper, pg1

provides the active participation of the offender, the victim and the affected party to sit face to face and respond to the crime. The parties involved not only addresses physical and material injuries caused by the crime but also psychological, emotional and social injuries as well.

Restorative Justice Council: “*Restorative processes bring those harmed by crime or conflict, and those responsible for the harm, into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward.*”³³

Restorative Justice is a process where the offender and the victim discuss the harm caused by the crime and through negotiation and dialogue solves the problem. The victim always has questions in mind related to crime which only the offender can give; Restorative Justice provides an opportunity to the victim to get all his answer.

Adoption on different parts of the World

The concept of Restorative Justice has been adopted by many countries like New Zealand, Australia, Canada, England, France, South Africa, etc. It is practiced through methods like Victim Offender Mediation, Family or Community Group Conferencing and Peacemaking Sentencing Circles. These methods help to repair the damage caused by the crime, providing opportunity for the victim to meet the offender.

In North America and in Europe, around 300 and 500 victim offender mediation programme gave outstanding results.³⁴ These programmes provided satisfaction and lower fear among the victims, lower rates of committing new offences and restitution of the harm caused to the victim.

The Center for Restorative Justice & Peacemaking at the University of Minnesota School of Social Work on the University's St. Paul campus was established that promote restorative justice by negotiation and dialogue between the offender, the victim and the community.³⁵ The center believes that the active role of the victim, offender and the community will solve the future problem and create the safe environment for the community.

³³ Restorative justice action plan for the criminal justice system, ministry of justice, pg4

³⁴ Supra note 1, pg 1

³⁵ Towards restorative justice, G S Bajpai, p. 8

The Crime (Restorative Justice) Act, 2004 has been implemented in the Capital Territory of Australia to provide a restorative conferencing scheme for adults.³⁶ The main objective of this act is to confer power on victims to decide how the harm done by the offence can be repaired and to provide a safe environment to the victims and the family members of the victims. This act ensures that the interest of the victim is given higher priority in the administration of restorative justice.³⁷ The Victim offender reconciliation programme can be seen more widely used in the United States of America. The same model has also been adopted in Canada.

Restorative justice in India

The Indian Criminal Justice system is based on Retributive theory. The main concern of the system is to inflict punishment on the offender and provide compensation to the victim. As a result, the focus is on the offender and the needs of the victim are not given importance. There is no law in India regarding victim so they can have say in criminal justice system. A victim does not participate in the prosecution and therefore feel alienated. The interest of the victim can only be protected if they participate actively in the investigation and the trial.

The practice of Restorative Justice in India is almost non-existent. The Criminal Justice System in India is not victim oriented, but punishment oriented based on retributive, deterrent and reformatory theory. The interest of the victims gets suppressed under these laws. The concept of compensation, restoration and reformation are not common here. The victimization theory is still in its abstract form and requires much attention. Section 357-358 of Criminal Procedure Code, 1973 states to provide the compensation to the victim.³⁸ It provides that the compensation can be awarded irrespective of whether the offence is punishable with fine or whether the fine is actually imposed. It can be viewed as a form of restitution. Usually, the compensation awarded is quite inadequate to meet the needs of the victim.

A beginning of Restorative Justice can be seen in the section 320 of criminal procedure code, 1973. It states compounding of offences. It is an effort to incorporate Restorative justice into the

³⁶ National commission on restorative justice, march 2008 interim report, p.23

³⁷ http://www.legislation.act.gov.au/b/db_13812/20040805-15695/pdf/db_13812.pdf

³⁸ Criminal procedure code, 1973, section 357- 358

prevailing system.³⁹ This gives the victim an opportunity to mediate with the offender and compromise, although, the consent of the court is required to finalize the case and agree with the mediation and compromise. But this may not always provide satisfaction to the victim. Many a times, compromise is done due to coercion, force or the corruption. The victims are not provided remedies in such cases. In the name of Restoration, it is simply disposing off of the cases. The main objective of restorative justice that is the realization of the crime by the offender and thus repairing the harm caused to the victim remains unaddressed. The offender simply escapes from the punishment through this practice. There is a dire need to look into these consequences and amend the section accordingly.

The prevailing Criminal Justice System requires a shift towards the Restorative Justice without departing from the safeguards that have been given to the accused persons in our constitutional and criminal jurisprudence.⁴⁰ Restorative justice keeps both the victim and the offender at par. The offenders are given respect and given opportunity to repair the harm caused by the crime and reintegrate in the society in the ways that lead to lawful behavior.

Case laws and Reforms towards state compensation theory

We have seen that in many cases, courts tried to compensate the victims by providing financial assistance to the victims. In *Dehli Domestic women working forum case* Court compensated victims by directing the concerned authorities to pay Rs 10000 each victims.⁴¹ In *Gudhalure M.J. Cherian v State of UP* court directed the state of UP to pay Rs. 2, 50,000 to two sisters who were raped by an unidentified assailant.⁴² *State of Gujrat v H'onable High court of Gujrat* Question was raised that weather victims of crime form the wages of prison labor needs to be compensated or not.⁴³ In this court directed that state that they should make provisions where Victims needs to be compensated from the money earned by the prisoners in the prisons. The Government of India, Ministry of Home Affairs by its order dated 24 November 2000 constituted the Committee on Reforms of Criminal justice System to consider measures for

³⁹ TOWARDS A RESTORATIVE CRIMINAL JUSTICE SYSTEM: VICTIM OFFENDER MEDIATION, Bhavya Sriram and Maheshwari S, p. 19

⁴⁰ 10th D.P. Kohli Memorial Lecture on 'Criminal justice system – growing responsibility in light of contemporary challenges' by Hon'ble Sh. K.G. Balakrishnan, Chief Justice of India (New Delhi – April 2, 2009), p. 12

⁴¹ *Dehli Domestic Working Women Forum v National Commssion for Women 1994*, SCALE 11

⁴² 1995 Supp 3 SCC 387.

⁴³ (1978) 7 SCC 392.

reviewing the criminal justice system. The committee submitted the report explaining how the SC and HC evolved in bringing the concept of monetary compensation to victims along with other reliefs. Report further stated that *“medical justice to the Bhagalpur blinded victims, rehabilitative justice to the communal violence victims and compensatory justice to the Union Carbide victims are examples of the liberal package of reliefs and remedies forged by the apex court. The decisions in Nilabati Behera v. State of Orissa (1993 2 SCC 746) and in Chairman, Railway Board v. Chandrima Das (2000 Cr LJ 1473 SC) are illustrative of this new trend of using constitutional jurisdiction to do justice to the victims of crime. Substantial monetary compensations have been awarded against the instrumentalities of the state for the failure to protect the rights of the victims.”*⁴⁴

In *Palaniappa Gounder v. State of Tamil Nadu (AIR 1977 SC 1323)* High court Imposed a fine of 20000 on the accused and after sentencing him directed that out of 20000 a sum of 15000 should be paid to the victim under Section 357 (1) (c) of the Code of Criminal Procedure, 1973. In *Sarwan Singh v. State of Punjab (AIR 1978 SC 1525)* Court observed that

“It is the duty of the court to take into account the nature of the crime, the injury suffered, the justness of the claim for compensation, the capacity of the accused to pay and other relevant circumstances in fixing the amount of fine or compensation. After consideration of all facts of the case, we feel that in addition to the sentence of 5 years rigorous imprisonment, a fine of Rs. 3,500 on each of the accused under Section 304 (1), IPC should be imposed.”

In *Guruswamy v. State of Tamil Nadu*⁴⁵ court imposed a fine of 10,000 thousand on the wrongdoer and directed that same should be paid to deceased widow wife and her minor children because they were completely dependent on the deceased.

Court changed its firm understanding after the case of *Sarwan Singh v State of Punjab* in the case *Hari Krishnan and the State of Haryana v. Sukhbir Singh and others (AIR 1988 SC 2127)*.

“The power under Section 357 Criminal Procedure Code is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is, to some extent, a recompensatory measure to rehabilitate to an extent the beleaguered victims of the crime, a modern constructive approach to crime, a step forward in our criminal justice system ... The payment by way of compensation must, however, be reasonable. What is

⁴⁴Government of India (2003) *Report of the Committee on Reforms of Criminal Justice System*, 1, pp. 75–84.

⁴⁵ 1979 Cr LJ 704

reasonable may depend upon the facts and circumstances of each case."⁴⁶

In *Rachhpal Singh v. State of Punjab*⁴⁷ High Court first directed to pay Rs 2,00,000 to the two victims by the accused, but further when they appealed to SC it was proved that accused is not in a position to pay 2,00,000 to both the victims so High court order to pay Rs 200000 was modified and amount for compensation was reduced to Rs 100000.

Conclusion

Hence, brief review of the existing legal framework in the area of providing compensation to victims very little has been done either through statutes or by schemes to address the series of problems faced by the victims because of crimes. There is a need to take a fresh look and understand the situation and position of victims of crimes. No one cannot deny that rights are not available to Victims many times state, even tried to compensate the victims but still some more rights are required. Proper financial assistance to victims is a very important factor in giving them fair and respectable status. The State should make laws in light of 357A of CrPC to provide financial assistance to victims in every cases even during the pendency of the cases. The problems of victims and the situation after the crime is very complex. These problems cannot be solved through the existing provisions. Therefore, the agencies of the criminal justice system should be receptive to the needs of the victims of crime and address their issues sincerely and empathetically.⁴⁸ Like in United States, Europe and the other developed countries, the Government of India and the State Governments should enact new legislations for proper compensations to the victims of crime, because existing enactments are not sufficient in the criminal laws to address the problems of the victims. Committee on Reforms of Criminal Justice System headed by Justice V. S. Malimath suggested many rights of the victims and recommended the states to make enactments for the financial assistance and compensation to the victims. The Committee also focused in the need of change in existing criminal justice system. It is responsibility of Government of India and other state governments to implement those

⁴⁶Hari Krishnan and the State of Haryana v. Sukhbir Singh and others (AIR 1988 SC 2127).

⁴⁷2002 Cr LJ 3540 SC.

⁴⁸Murugesan SRINIVASAN & Jane EYRE MATHEW, Victims and the Criminal Justice System in India: Need for a Paradigm Shift in the Justice System.

recommendations. There should also be a change in the focus from criminal justice to victim justice, but victim justice should be perceived as complementary and not contradictory to criminal justice.⁴⁹

⁴⁹Id