

A STUDY ON THE FUNDAMENTALS OF COMPENSATORY RELIEF TO THE VICTIMS OF RAPE IN INDIA

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ABSTRACT

“In criminal law, the expression “a criminal must pay his debt to the society” is regularly utilized and there after no compensation is awarded to the victim. Rape is one of the serious offences where the victim instead of getting support and sympathies is subjected to insensitivities and is socially segregated and ethically degraded with a deep rooted shame on her poise and character. The mental torment is profound and desolation is unbearable. The damage is physical and additionally mental to the victim. The reality of the matter is that money cannot repair the virtue and chastity of the woman which is valuable asset to the women in India. Of all things considered, if adequate compensation, rehabilitation and restoration is conceded to her, the victim can be efficiently helped to a great extent. Present paper discusses compensatory jurisprudence in India, its background and evolution, focusing on its implementation and drawbacks. The Supreme Court of India has recently observed that no compensation can be satisfactory nor would it be able to console the victim yet as the State has failed in ensuring such genuine infringement of a victim’s fundamental right, the State is compelled by a sense of duty to pay compensation, which may help in the victim’s recovery.”

Keywords: compensation, rape victim, justice, rehabilitation, infringement, restoration.

INTRODUCTION

Victim’s compensation has dependably been the sobbing beggar at the gateway of the criminal justice system. In spite of the fact that, it is a well-established idea yet its improvement on more logical lines and furthermore as branch of criminology has started a couple of decades prior. In India, there are diverse statutory provisions in criminal justice system, under which compensation can be granted to the victims of various crimes, like - **Fatal Accident Act, 1855, Probation of Offenders Act, 1958 and Code of Criminal Procedure, 1973.** In pursuance of the proposals and recommendations of the Law

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Commission of India in its report² an extensive provision for compensation to victims of crime has been embedded in **Section 357** of the Code of Criminal Procedure, 1973. As indicated by **Section 357, sub-section (1) and (3)**, the court may grant compensation to the victim at the time of sentencing, in the event if it considers suitable in a specific case in light of a legitimate concern for justice. These powers to award compensation are not subsidiary to other sentence, but rather it is addition there to.³ It is important to take note that the trial courts have from time to time utilized the powers conferred on them under **Section 357⁴, Cr. P.C.**, generously. All things considered, criminal courts have not, taken critical note of the said provision or practiced the power vested in them thereunder.⁵ The Law Commission alludes to this unfortunate oversight in the accompanying words: *“We have a fairly comprehensive provision for payment of compensation to the injured party under section 545 of the Criminal Procedure Code. It is regrettable that our courts do not exercise their statutory powers under this section as freely as liberally as could be desired⁶”*.

BACKGROUND OF COMPENSATORY JURISPRUDENCE IN INDIA

In India, Rape is defined under with **Section 375** of the Indian Penal Code. Section 375 defines Rape and **Section 376** provides for punishment. The most extreme or maximum punishment which can be granted is life imprisonment. The minimum punishment is settled at **seven years** which can be reduced at the discretion of the Court⁷. The **deterrent effect** of punishment is right around zero. There ought to be no exclusion from the minimum punishment. A more prominent stigma should be connected with the wrongdoing of assault, not to the victim but rather to the accused. Various Reports of **Law Commission of India** and Committees on **Reforms of Criminal Justice Administration** have played a vital part in creating compensatory jurisprudence in India. The Law commission of India has until now submitted Reports on the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1898 and of 1973 has thought upon the issue of justice to victims of crime and has likewise suggested a few recommendations for change. The **Malimath Committee (2003)** on Reforms of Criminal Justice System in India has also laid emphasis on the participation of victims in

² 41st Report, *Law Commission of India on Indian Penal Code, 1860* (1969).

³ Gaur, K.D., *Criminal Law and Criminology* 851, Eastern Book Company, Lucknow, (2002).

⁴ Section 357. Order to pay compensation.

⁵ Mundrathi, S., *Law on Compensation- To Victims of Crime and Abuse of Power* 182, Deep and Deep Publications, New Delhi, (2007).

⁶ 42nd report, *Law Commission of India on Code of Criminal Procedure, 1898*. para 3.17 (1971).

⁷ *Ankush Shivaji Gaikwad v. State of Maharashtra*, (1981) 1 SCC 107.

the criminal justice processes and has advocated for compensation and restitution of the victims.

PROVISIONS FOR COMPENSATION IN CRIMINAL LAW

We have a genuinely extensive arrangement for installment of pay to the harmed party under segment provision for payment of compensation to the aggrieved party under **Section 545** of the Criminal Procedure Code. **Section 357** of Cr. P.C. is a vital provision; however courts have seldom invoked it. Perhaps due to ignorance of the intent of it, this Section of law enables the court to grant compensation while passing judgment of convicting.⁸ In 2008, Cr. P.C. was amended and **Section 357 A**⁹ was incorporated in which **Victim Compensation Scheme** had been introduced. However, there are number of judgements¹⁰ in which courts gave no reasons for not providing compensation. Again in 2013, new provisions namely **Section 357 B** and **357 C** have been inserted in Cr. P.C.¹¹ **Section 357 B** provides the additional compensation to victims who come under **Section 326 A** and **376 D** of the Indian Penal Code. **Section 357 C** gives the directions to all the hospitals whether they run by govt. or by local authorities that they provide the free medical aid to the victims of sub-sections **326 A, 376 A, 376 B, 376 C, 376 D** of the Code.

CONSTITUTIONAL PERSPECTIVE OF COMPENSATORY JURISPRUDENCE

Rape includes infringement of fundamental rights under **Article 21** of the Indian Constitution. Compensation for the infringement of fundamental rights is given as a method for penalizing the State violating the fundamental rights ensured by the Constitution of India and for the breach of its **public law duty**. This compensation is in the idea of '**exemplary damages**' granted against the miscreant for the breach of a public law duty.¹² This is apart from and in addition to compensation allowed for the misfortune or damage under the law of torts. In any case, the want for **retribution** prompting the victims taking '*law in their own*

⁸ *Hari Kishan and State of Haryana v. Sukhbir Singh*, AIR 1988 SC 2127 (G.L. Oza and K. Jagannatha Shetty, JJ.); also followed in *Roy Fernandes v. State of Goa and Ors.*, AIR 2012 Cri LJ 1542; *R. Mohan v. A.K. Vijay Kumar*, 2012 Cri.LJ 3953.

⁹ The Criminal Amendment Act, 2008.

¹⁰ *Guru Basavaraj alias Benne v. Union of India*, 2012 Cri. LJ 4474 SC; *Dalbir Singh v. State of Punjab & Ors.*, 2009 Cri. LJ 1543 SC; *Smt. Saraswati Devi v. State of Rajasthan & Ors.*, 2009 Cri. LJ (NOC) 1068 Raj.

¹¹ The Criminal Law (Amendment) Bill, 2013.

¹² Mundrathi, Sammaiah, *Law on Compensation to Victims of Crime and Abuse of Power*, (2002), p.75.

hands' can be adequately checked just where the victims see that the criminal justice framework will guarantee them equity and security¹³.

This privilege is not quite the same and independent of the right to retribution, duty of which has been accepted by the State in a society represented by **Rule of Law**. Right of access to justice under **Article 39-A** and **Principle of Fair Trial** mandate right to legal aid to the victim of rape, It additionally mandates protection to witnesses, advising and medical aid to the victims of the dispossessed family and in proper cases, rehabilitation measures including money related compensation. In the *S. S. Ahluwalia v Union of India*¹⁴, Hon'ble Supreme Court held that in extended significance ascribed to **Article 21** of the constitution, where the state neglects to ensure the life of the general population, it couldn't get away from the liability to pay compensation to the victims.

JUDICIAL APPROACH TOWARDS RAPE VICTIMS

Krishna Iyer J. speaking for the Court in *Maru Ram & Ors. v. Union of India and Ors.*¹⁵, stated that the length of the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty. The Apex Court in the *Hari Kishan case*,¹⁶ directed the attention of all courts to exercise the provisions under **Section 357** of the Cr. P.C. liberally and to award adequate compensation to the victim, particularly when an accused is **released on admonition, probation** or when the parties enter into compromise.

In *Ms. Z v The State of Bihar and Others*¹⁷, Keeping in view the mental injury that the victim has to suffer, the appellant got a sum of Rs. 10,00,000/- as compensation from the State and the same was to be kept in a fixed deposit in her name so that she may enjoy the interest.

J. M.Y. Iqbal in *Tekan Alias Tekram v State Of Madhya Pradesh (2015)*¹⁸ stated that this practice of giving different amount ranging from Rs.20,000/- Rs.10,00,000/- as compensation

¹³ Dr. Mamta Rao "Law Related To Women And Children", p. 74

¹⁴ (2001) 4 SCC 452.

¹⁵ (1981) 1 SCC 107; also followed in *Ankush Shivaji Gaikwad v. State of Maharashtra*, Criminal Appeal no. 689 of 2013 decided on 3rd May, 2013.

¹⁶ *Hari Kishan and State of Haryana v. Sukhbir Singh*, AIR 1988 SC 2127 (G.L. Oza and K. Jagannatha Shetty, JJ.); also followed in *Roy Fernandes v. State of Goa and Ors.*, AIR 2012 Cri LJ 1542; *R. Mohan v. A.K. Vijay Kumar*, 2012 Cri.LJ 3953.

¹⁷ Civil Appeal No.10463 of 2017.

¹⁸ Criminal Appeal No. 884 of 2015.

for the offence of rape under Section 357A needs to be introspected by all the states and the union territories, states should consider and formulate a uniform scheme.

While taking cognizance related to compensation the Supreme Court observed in *Ankush Shivaji Gaikwad v. State of Maharashtra (2013)*¹⁹ that the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Still, there are number of judgements in which courts are giving no reasons for not awarding compensation and they are passing non speaking orders.²⁰ In *Uttarakhand Sanghrash Samiti, Mussorie v. State of Uttar Pradesh and others*²¹ compensation to victims of the women molested and raped, the court viewed the circumstances of these cases the same as in death and grievous hurt and held that of those women who were subjected to rape each shall be entitled to receive compensation being the same as for victim of death. In *The Chairman, Railway Board and Others v. Mrs. Chandrima Das and Others*,²² the High Court had awarded a sum of Rs.10 lakhs as compensation for Smt. Hanuffa Khatoon as the High Court was of the opinion that the rape was committed at the building of Rail Yatri Niwas, belonging to the Railways and was perpetrated by the Railway employees.²³

SCHEME FOR RELIEF AND REHABILITATION OF VICTIMS OF RAPE

The Hon'ble Supreme Court in *Delhi Domestic Working Women's Forum v Union of India and others*²⁴, had directed the National Commission for Women to evolve a "scheme so as to wipe out the tears of unfortunate victims of rape". The Supreme Court observed that in respect to the **Directive principles** provided in the **Article 38(1)** of the Constitution, it was essential to set up **Criminal Injuries Compensation Board**, as rape victims other than the mental trauma, often incur substantial financial loss and in most cases are too traumatized to continue with their employment. The Court further directed that compensation for rape victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries compensation board whether or not a conviction has taken place. The Board shall

¹⁹ Criminal Appeal no. 689 of 2013.

²⁰ *Guru Basavaraj alias Benne v. Union of India*, 2012 Cri. LJ 4474 SC; *Dalbir Singh v. State of Punjab & Ors.*, 2009 Cri. LJ 1543 SC; *Smt. Saraswati Devi v. State of Rajasthan & Ors.*, 2009 Cri. LJ (NOC) 1068 Raj.

²¹ [(1996)UPLBEC 461]AUHC.

²² (2000) INSC 26 (28 January 2000).

²³ The Criminal Amendment Act, 2008.

²⁴ (1995) 1 SCC 14.

take into account the suffering, pain and shock as well as loss of income due to pregnancy and the expenses of child birth if this happens as a result of rape.

NEED FOR EXTENSIVE COMPENSATION PROGRAMME

In the Indian criminal justice framework, offense is viewed as against the state. So the victim needs to file a separate suit to recoup the damages for the offence that has been committed against her. Section 357 of Cr.P.C. in spite of the fact that provision is applicable only when the accused is indicted and condemned, but by amendment to Cr.P.C. **plea bargaining** has been introduced for the advantage of victims to recuperate compensation from the accused in specific cases with court's consent. Offenses culpable with over three year of imprisonment and against children, women and state cannot be settled by compensation. Supreme Court judgment in *Rupaldeo Bajaj v K.P.S. Gill*²⁵ case is desirable and timely move to fix liability of offender and giving monetary relief to victim.

CONCLUSION

"It is true that perfect compensation is hardly possible and money cannot renew a physique frame that has been battered and shattered"

-Lord Morris²⁶

Thus it can be concluded that the expanding universe of compassionate criminology must respond realistically to the new challenges of human rights and social justice by resorting to new methodologies of **reparative, compensatory, preventive** and judicial remedies. From the above discussion it becomes clear, that a sentence of imprisonment can be granted for default in payment of compensation awarded under Section 357(3) of Cr.P.C. **The whole purpose of the provision is to accommodate the interests of the victims in the criminal justice system.** Sometimes the situation becomes such that there is no purpose is served by keeping a person behind bars. Instead directing the accused to pay an amount of compensation to the victim or affected party **can ensure delivery of total justice.** Ends of justice can be served if all the

justice can be served if all the stakeholders do their duty in letter and spirit of the Indian Constitution and other relevant Statutory provisions related to compensation and rehabilitation of victims of crime especially victim of rape. The victim of crime in general and rape in particular must claim our attention since injustice to them can be fully undone only by **restitutive justice** beyond punishment of the offender.

²⁵(1995) 6 SCC 194.

²⁶*West v. Shephard* [1963] UKHL 3.