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Role of Judiciary in Genesis of Compensatory Jurisprudence in India

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Abstract

This research paper is aimed analysing the role of Judiciary in development of compensatory jurisprudence. Crime often entails substantive harm to people and not merely emblematic harm to the society. The gloomy fact is that when a crime is committed against a person, the victim loses out a lot apart from incurring damages and injuries. The work of a judiciary should not only be to punish the guilty but also compensate the victim as even if the accused is punished, the victim's loss is not compensated adequately and swiftly, without any further traumatization.

Keywords: Judiciary, Compensatory Jurisprudence , Judicial Activism , Statutes

1. INTRODUCTION

The Supreme Court is making all endeavour to properly implement the beneficial provisions as to victim compensation. The Criminal Justice System in India through the Code of Criminal Procedure and the Constitutional provisions indicate that there is lack of equilibrium in the scales of justice in the area of victim compensation. The principle of payment of compensation to the victim of crime was evolved by Hon'ble Supreme Court on the ground that it is duty of the welfare State to protect the fundamental rights of the citizens not only against the actions of its agencies but is also responsible for hardships on the victims on the grounds of humanitarianism and obligation of social welfare duty to protect its subjects and give them equitable Justice etc. It can be said that *judicial activism* in the field of Article 21 of Constitution of India has expanded the concept of right to life and personal liberty. The Indian judiciary developed *Compensatory Jurisprudence* based on Article 21 and the principle of absolute liability. Compensation is indeed the best option available to the victims of economic offences. Despite significant progress in the field

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of victimology through the medium of judicial Activism, there are still many challenges being faced in India which demand more attention in today's time.[2]

2. EMERGENCE OF COMPENSATORY JURISPRUDENCE

The system of administering criminal justice is to be assessed on the basis of its ability to secure justice to the victim of a crime and protect the rights of the accused. Criminal Justice System should strike a balance between the interests of the victim and the rights of the accused in the scales of justice. The Criminal Justice System in India through the Code of Criminal Procedure and the Constitutional provisions indicate that there is lack of equilibrium in the scales of justice in the area of victim compensation. The balance is tilted in the favour of the accused and every step in the process is oriented to the protection of the accused. The System must do more than punishing the criminal. The emergence of compensatory jurisprudence in the light of human rights philosophy is a positive signal indicating that the judiciary has undertaken the task of protecting the right to life and personal liberty of all the people irrespective of the absence of any express constitutional provision and of judicial precedents. Compensation to victims is thus a recognized principle of Law being enforced through the Indian Courts.

3. LEGAL FRAMEWORK IN INDIA

Some statutes in civil Law make provisions for immediate relief and compensation to the victim of accident and industrial disasters and they are; The Workmen's Compensation Act, 1923,[3] The Motor Vehicle Act, 1988[4]. The Railway Act, 1989,[5] The Public Liability (Insurance) Act, 1991[6] and The National Green Tribunal Act, 2010[7] have some provisions for compensating the victims of crime. The Code of Criminal Procedure, 1973 lays down provisions for victim compensation in

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[3] Act No.8 of 1923
[4] Act No. 59 of 1988
[5] Act No. 24 of 1989
[6] Act No. 6 of 1991
[7] Act No.19 of 2010

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section 357. Section 357 is an effectual provision wherein sub-sections (1)(b) and (c) provide for apportioning compensation from fine imposed by the Court to the victim. Section 357(3) of the said Code provides unbound discretion to judges to balance the right of victims for compensation and save them from resorting to the cumbersome process of civil Court as it does not put any limitation over the quantum of compensation. Section 357 (3) of the Code of Criminal Procedure, 1973 indeed empowers the trial Court, while imposing fines, to direct that the fine recovered be paid as compensation to the victim of the crime. Where the Court has not imposed fine as part of the conviction, it may direct the accused to pay compensation to the victim. However, Courts have not often resorted to these and other provisions provided in our penal statutes.

The plight of victim in criminal cases was highlighted in the report of Malimath Committee. Very early in the deliberations of the Committee it was recognized that victims do not get the much needed legal rights and protection. They deserve to play their just role in criminal proceedings but do not get so which tend to result in disinterest in the proceedings and consequent distortions in criminal justice administration. In every interactions the committee held with police, the judges, the prosecution and defence lawyers, jail officials and general public, this concern for victims was quite pronounced and view was canvassed that unless justice to victim is put as one of the focal points of criminal proceedings, the system was unlikely to restore the balance as a fair procedure in the pursuit of truth.

"The amendments to the Cr.P.C. brought about in 2008[8], focused heavily on the rights of victims in a criminal trial. Though the 2008 amendments left Section 357 unchanged, they introduced Section 357A under which the Court is empowered to direct the State to pay compensation to 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." Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to

[8] Criminal Law (Amendment) Act, 2008

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award him/her compensation. This provision was introduced on the recommendations made by the Law Commission of India in its 152nd[9] and 154th[10] Reports respectively.

India was lacking a comprehensive legislation for compensating the crime victims. The Criminal Procedure (Amendment Act) 2008 has inserted a new section 357 A which provides wider powers and detailed mechanism to provide compensation to the victim. The new section provides that every State government in consultation with the central government shall prepare a scheme for providing compensation to victim or his dependents who have suffered loss as a result of the crime and who require rehabilitation under the amended Code. The District Legal Service Authority or the State Legal Service Authority shall decide the quantum of compensation after the recommendations made by the Court. However, prior to 2008 amendments, despite the absence of any special legislation to render justice to victims in India, the Supreme Court had taken a proactive role and resorted to affirmative action to protect the rights of victims. The Court had adopted the concept of restorative justice and awarded compensation or restitution or enhanced the amount of compensation to victims, in many cases of utmost importance beginning from the 1980s, such as *Sukhdev Singh v. State of Punjab*[11]; *Balraj v State of UP*[12]*; Giani Ram v. State of Haryana*[13]*; Baldev Singh v State of Punjab*[14].

4. ROLE OF INDIAN CONSTITUTION IN DEVELOPMENT OF COMPENSATORY JURISPRUDENCE

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

[9] Law Commission of India , *The Code of Criminal Procedure, 1973,*One Hundred and Fifty Second Report, 1994
[10] Law Commission of India , *The Code of Criminal Procedure, 1973,*One Hundred and Fifty Fourth Report,1996
[11] 1982 SCC (Cr) 467
[12] AIR 1995 SC 1935
[13] AIR 1995 SC 2452
[14] AIR 1996 SC 372

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flower in the national life of the country.[15] Compensation, restitution or rehabilitation is core to achieve such an ideal State of society where victim may find himself in having confidence and support of other members of the society and getting a change of his or her being rehabilitated. The theory enshrined under Article 14 of the Constitution[16] ensures 'equal protection of Laws' that demands care and protection of victim by and within the Code of Criminal Procedure which till now may have tendency to protecting rights of offenders only. Fundamental right to life and personal liberty, enshrined in Article 21 of the Constitution is wide enough to include greater protection to the victims of crime and, as it insures human dignity to all, it must recognize rights of victim by providing them better care and protection as has been held in landmark cases like *Hussainara Khatoon v. State of Bihar*[17], *Joginder Singh v. State of Uttar Pradesh, etc.*[18]

The Directive Principles of State Policy enshrined under Part IV the Constitution for basic policies for the social and economic betterment and development of individual as well as groups and thereby provides 'foundation for a new social order' in which justice, social and economic, would flower in the national life of the country.[19] Article 41, relates to Victimology in a wider perspective, and mandates, inter-alia that the State shall make effective provision for securing public assistance in case of disablement and in other cases of undeserved want. Undoubtedly, the crime victims and other victimized people swim into the haven of Article 41 as it mandates that public assistance must be provided to such vulnerable sections of the society.[20]

Another set of provision is Article 51A[21] which provides a Fundamental Duty to every citizen of India to protect and improve the natural environment and to have compassion for living creatures" and "to develop humanism". Justice Krishna Iyer rightly opined that if empathetically interpreted and imaginatively expanded, one can

[15] Article 38, The Constitution of India, 1950
[16] Equality Before Law
[17] AIR 1979 SC 1360
[18] AIR 1994 SC 1349
[19] Article 38, The Constitution of India, 1950
[20] Right to work, to education and to public assistance in certain cases
[21] Fundamental Duties , Part IV-A , The Constitution of India,1950

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find here the constitutional beginnings of Victimology.[22], So far as the Constitutional scheme is concerned, the compensation awarded by the Supreme Court to the victims is the outcome of various decisions of the Supreme Court either by reading rights enshrined in Part III and in some cases Part IV as well with Articles 32, 136 and 142 of Constitution of India, which is to be given either by the State or the accused. The scope of fundamental freedoms and the space for democracy have both been enlarged and increased over the years. There are surfeit of cases in which the judiciary, through their dynamic and bold judgments, has enhanced the concept of fundamental rights especially Article 14, 19 and 21 of the Indian Constitution, 1950.

Rudul Shah v, State of Bihar[23], is the most celebrated case where the Hon'ble Supreme Court for the first time directed the State to pay compensation of Rs. 35,000 to Rudul Shah for violation of his fundamental rights. The decision in Rudal Shah's case has been followed in series of pro-victim decisions wherein the compensatory jurisprudence culminated and kept blooming.

Question regarding the awarding of monetary compensation through writ jurisdiction was first raised before the Supreme Court in *Khatri (II) v. State of Bihar*[24] popularly known as *Bhagalpur Blinding case* where the police had blinded certain prisoners depriving them of their right to life and liberty. The question posed before the Court was whether a person who has been deprived of his right to life or personal liberty by the State, could be compensated by granting monetary relief. The court observed that if compensation was not to be granted, Article 21 would be reduced to a nullity, "a mere rope of sand"[25]. The three police officers who were involved in the shocking incident were finally convicted for taking the Law into their own hands.[26]

The breakthrough on the lineage was achieved in *Devaki Nandan v. State of Bihar* [27] . Herein, the petitioner's pension had been delayed for twelve years.

[22] V.R. Krishna Iyer, *A Burgeoning Global Jurisprudence of Victimology and some Compassionate Dimensions of India Justice to Victims of Crime,* 1999 (unpublished paper)
[23] (1983) 4SCC 141
[24] AIR (1981)1 SC 627
[25] *Id*. at p.1974
[26] *Justice At Last,* The Hindustan Times, September 3, 1987
[27] AIR 1983 SC 1134

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"Exemplary costs" were awarded to the petitioner for 'international, deliberate and motivated' harassment of the petitioner.

In *Sebastian M. Hongray v. Union of India*[28], two women filed a writ of habeas corpus to produce their husbands, who were found missing from army custody. On account of failure of Government, to produce in Court, the Supreme Court directed the respondents to pay Rs.1 lakh by way of exemplary costs to be given to each of the wives of the missing persons keeping in view the torture the mental agony and the oppression undergone by them.

In another important case of *Bhim Singh v. State of Jammu and Kashmir*[29], Bhim Singh, a Member of the Legislative Assembly, was arrested while on his way to attend a meeting of the Assembly. Due to this arrest he was deprived of his constitutional right to attend the Assembly session. The Supreme Court awarded a sum of Rs. 50,000/- as compensation and ordered the same to be paid within two months.

In the decisions from *Rudul Shah to Bhim Singh* the Courts so far laid down no basis for quantification of the amount of exemplary costs. And perhaps this was the reason that the amount of monetary compensation diverged in these cases. The Honorable Supreme Court in *Peoples' Union for Democratic Rights v. State of Bihar*[30] laid down the working principle for the payment of compensation to the victims of ruthless and unwarranted police firing. The operational principle was not thought to be appropriate , as only the meagre sum of rupees twenty thousand was fixed to be paid to the victims successors.

Smt. Nilabati Behera Alias Lalit v. State of Orissa And Ors.[31] is a case where a letter of a mother informing Supreme Court about death of her son in police custody was in consideration. The deceased was aged about 22 years and had a monthly income between Rs. 1200 to Rs. 1500. A total amount of Rs. 1,50,000 was decided to be appropriate as compensation, to be awarded to the petitioner in the present case.

[28] AIR 1984 SC 571
[29] (1985) 4 SCC 677
[30] AIR 1987 SC 355
[31] AIR 1993 SC 1960

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Reference to the I.C.C.P.R.[32] was again made by the Supreme Court in the case of *D.K.Basu v. Union of India*[33], wherein it was held that the pecuniary compensation was an appropriate, effective and sometimes, the only suitable remedy for redressal of grievances on human rights' abuse, and thus, leaving the aggrieved at the mercy of remedies available in civil Law, would hamper the Court's role as the protector and custodian of the citizen's indefeasible rights to an unacceptable degree.

In *R.S. Sodhi v. State of U.P.*[34], officials pulled out ten young Sikhs from a bus carrying Sikh pilgrims, took them to an adjoining jungle and shot them dead. However, the State was made liable for the compensation awarded to the petitioners. There have been several such cases, as for example *Bacha Bora v. State of Assam*[35], *Smt. Purnima Barua v. Union of India,*[36] especially of army and custodial violence, where gross irregularities on the individual officer's part went unpunished, and the State was made bound by law to pay the compensation.

The decisions in *Nilabati Behera v. State of Orissa*[37]and in *Chairman, Railway Board v. Chandrima Das*[38]are illustrative of the new trend of using Constitutional jurisdiction to do justice to the victims of crime.The Court laid down in lucid terms that Article 32 imposed obligation on the Court "to forge such new tools as may be necessary for doing complete justice and enforcing fundamental rights of the individuals having justice personality"

Even the witnesses of crimes, like the victims, face tremendous obstacles. In a high profile case popularly called *The Best Bakery case,* both the fast track Court as well as the High Court of Gujarat acquitted 21 individuals of murder due to insufficient evidence after 37 out of 73 witnesses including key witness Zahira Sheikh, turned hostile. The individuals were charged with the murder of fourteen people during a riot in Vadodara. Although at that time there was reasonable

[32] Article 9(5)
[33] AIR 1997 SC 610, 624
[34] (1991) 2 SCC 463
[35] 1991 Cri. L.J.2782
[36] 1991 Cri. L.J, 2675
[37] (1993) 2 SCC 746
[38] 2000 Cri. L.J. 1473 SC

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suspicion that witnesses were being threatened and coerced, the public prosecutor took no steps to protect the witness and made no request to hold the trial *in camera.*

Later in a distinctive judgment in retrial of the case *Zahira Habibullah Sheikh v. State of Gujarat*[39]*,* the Supreme Court ordered a retrial and reinvestigation of the case in Maharashtra, which ultimately contributed to life sentences for none of the accused. In its decision, the Supreme Court noted that "the (lower) Court can neither feel powerless not abdicate its duty to arrive at the truth and satisfy the ends of justice".

The fallout from the path-breaking judgment in *Vishaka v. State of Rajasthan*[40]helps to illustrate the situation of female victims. Social activists and NGOs brought a writ petition seeking legal redress for the sexual harassment of working women and for realization of gender equality. The Supreme Court in this landmark judgment recognized sexual harassment of working women in workplace and outlined guidelines to prevent and redress complaints of such crimes.

The Supreme Court has observed in *M.C. Mehta v. Kamal Nath,*[41]that it has power under Article 32 to award compensation to the victims of pollution. Dealing with the power of the Human Rights Commissions to award compensation under Section 18(a) of the Protection of Human Rights Act, 1993, the Allahabad High Court in *U.P. Power Corporation Ltd. v. National Human Rights Commission,*[42]held that Commission has jurisdiction to recommend compensation as the Commission may consider necessary.

The principle of payment of compensation to the victim of crime was evolved by Hon'ble Supreme Court on the ground that it is duty of the welfare State to protect the fundamental rights of the citizens not only against the actions of its agencies but is also responsible for hardships on the victims on the grounds of humanitarianism and obligation of social welfare duty to protect its subjects and give them equitable Justice etc. It can be said that *judicial activism* in the field of Article 21 of Constitution of

[39] (2004) 4 SCC 158
[40] AIR 1997 SC, 3011
[41] AIR 2000 SC 1997
[42] AIR 2010 AII 139

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India has expanded the concept of right to life and personal liberty. The Indian judiciary developed *Compensatory Jurisprudence* based on Article 21 and the principle of absolute liability. Compensation is indeed the best option available to the victims of economic offences. The concept of compensation by the State for the action of its officials was evolved by the Hon'ble Court against the doctrine of English Law:– "King can do no Wrong" and then gradually expanded the concept of compensation even in criminal matters.

5. SHIFTING OF PARADIGMS IN CRIMINAL JUSTICE

The propagation of research about victims has raised larger questions about the very purpose of criminal justice and the place of the victim within it. Victim surveys have revealed that the public are not so punitive as has been believed and that many victims would welcome the opportunity to seek some reparation or even reconciliation in place of traditional punishment. Such evidence together with the growing dissatisfaction among academics, policy makers and criminal justice professionals with the existing model of punishment, has prompted discussion of models of reparative justice reoriented towards the aims of mediation and restitution.Reorientation of the criminal justice process towards the victim is as yet in its infancy but significant changes have already occurred, most importantly in respect of compensating harms. At a time when desert based sentencing is gaining way, simultaneous demands for a more victim oriented Criminal Justice System challenge the conventional means of assessing the gravity of offences. The proper priority between victim oriented and desert based sentencing is far from being resolved. The implications of , introducing the victim into that delicate balance between the State and offender, between offence and penalty, will surely gain a momentum.

Baldev Singh v. State of Punjab [43] , is another important case in the victimological approach of judicial law making. Here, the Court used its judicial discretion to the benefit of the victims and opted for the compensation theory instead of extending the sentences of imprisonment. The judicial contribution for the effective use of section 357 of The Criminal Code of 1973 is seen in the landmark case of

[43] AIR 1977 SC 1323

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Sarwan Singh v. State of Punjab[44], where It was held by the Hon'ble Supreme Court that if it is found by the court that compensation should be paid, then the capacity of the accused to pay the compensation has to be determined and that if accused has the capacity to pay there could be no reasons for court in not directing such compensation .In the case of *Hari Singh v. Sukhbir Singh*[45], the Hon'ble Supreme Court urged all courts to exercise their power under section 357(3) of the said Code liberally to safe guard the interests of victim and also laid down principles which the court should consider regarding assessment of amount of compensation and mode of its payment. The Supreme Court while discussing the scope of section 357 of the Code of Criminal Procedure held "…this power of Court to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he/she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is, to some extent, a constructive approach to crime, it is indeed a step toward in our criminal justice system."

As regards section 358 of the Cr.P.C. the limit of compensation not exceeding one thousand rupees even after the amendment, is inadequate and unjustified and needs further amendment in the increase. Under section 359, compensation to complainant in non-cognizable cases is limited to expenses in respect of process fees, witnesses and pleader's fees but does not include any other loss.

In the case of *P.Rathinam v. State of Gujarat*[46], the matter pertained to the rape of a tribal woman in the police custody, allegedly in the presence of her husband. A Commission was appointed by the Supreme Court to find out the true state of affairs.. On the basis of the report of the Commission, departmental enquiries were commenced against various officers. The Apex Court directed the State of Gujarat and other concerned officers to conclude the said enquiries expeditiously. To the unsatisfactory explanation, given by the state government, causing the delay, the Supreme Court directed that all the enquiries should be concluded within a period of

[44] (1978) 4 SCC 111
[45] (1988) 4 SCC 551
[46] 1994 SCC (Cri) 1163

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three months and an affidavit be filed indicating the result of such enquiries. A sum of Rs. 50,000 (Rupees fifty thousand only) was ordered to be paid as interim compensation, by Gujarat, to the victim of the rape, Smt. Guntaben, wife of Hanna Ramji.

The case of *State of Punjab v. Ajaib Singh*[47], was a unique case where the Supreme Court granted huge compensation to the victim even after the accused was acquitted. This was a remarkable judgment wherein the court ordered the accused to pay to the heirs of the deceased a sum of Rs. 5,00,000 which the accused had offered to the family of the victim, to avoid the unnecessary litigation but the victim's family had refused and opted to proceed with the litigation.

In the case of *Bodhisattwa Gautam v. Subhra Chakraborty*[48], the accused on a false promise of marriage cohabited with the victim and subsequently, falsely performed the marriage ceremony in front of family deity by applying vermillion on the complainant's forehead. The accused had committed offences under sections 312/420/493/496/498-A of IPC. The instant case was a rape case and the Supreme Court ordered the accused to pay an interim compensation of Rs. 1000 per month to the victim during the continuance of the trial proceeding. The payment of interim compensation would prevent undue delay in delivery of justice to victim.

It is a landmark case in which the Supreme Court issued a set of guidelines to help indigenous rape victims who cannot afford legal, medical and psychological services, in accordance with the Principles of UN Declaration of Justice for Victims of Crime and Abuse of Power, 1985[49]:

(a) The complainants of sexual assault cases should be provided with a victim's Advocate who is well-acquainted with the Criminal Justice System to explain to the victim the proceedings, and to assist her in the police station and in Court and to guide her as to how to avail of psychological counselling or medical assistance from other agencies;

[47] 1995 2SCC 486
[48] AIR 1996 SC 922
[49] Adopted Vide GA Resolution 40/34,1985

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(b) Legal assistance at the police station while she is being questioned;

(c) The police should be under a duty to inform the victim of her right to representation before any questions are asked of her and the police report should state that the victim was so informed;

(d) A list of Advocates willing to act in these cases should be kept at the police station for victims who need a lawyer;

(e) The Advocate shall be appointed by the Court, in order to ensure that the victims are questioned without undue delay;

(f) In all rape trials, anonymity of the victims must be maintained;

(g) It is necessary, having regard to the Directive Principles contained under Art. 38(1) of the Constitution of India, to set up a Criminal Injuries Compensation Board, Rape victims frequently incur substantial loss. Some, for example, are too traumatized to continue their employment;

(h) Compensation for 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 will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of childbirth if this occurred as a result of the rape.

In *Delhi Domestic Working Women's Forum v. Union of India and Others*[50] A Public Interest Litigation espousing the pathetic plight of four domestic servants who were raped in a moving train, the Apex Court, on 19 October, 1994, highlighting ordeals of victims of rape and defects in the present criminal law system vis-à-vis victims of rape, outlined a set of broad parameters to assist them. Relying heavily upon Article 38(1) of the Constitution and drawing inspiration from the Criminal Justice Act, 1991 of the United Kingdom, dealing with an institutionalized payment of compensation to the victims of crime including rape, stressed the need to set-up a Criminal Injuries Compensation Board (CICB) to compensate victims of rape. It also

[50] (1995) 1 SCC 14

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directed the National Commission for women to formulate such a scheme within six months from the date of judgment and the Union of India to protect fundamental rights.

In *Uttarakhand Sangharsh Samitee v. State of U.P.*[51] commonly called the Uttrakhand Stir (Rallyist) case, the Allahabad High Court delivered a path-breaking judgment in a group of six cases arising out of the incidents in Khatima, Mussoorie and Muzaffamagar. The court in a historic decree awarded Rs. 10 lakh each to deceased victim's families and Rs. 10 lakh for rape victims judging the crime equivalent to death; Rs. 5 lakh to the victim of sexual molestation; and Rs. 2.5 lakh to Rs. 50,000 for less serious injuries. Thus, the court while advancing the cause of human rights and giving more teeth to the constitutional guarantee for a right to live with dignity vide Article 21, declared that the court itself could award compensation in a case of human rights violation.

In the case of *Chairman, Railway Board v. Chandrima Das*[52], Mrs. Chandrima Das, an advocate at the Calcutta High Court, had filed a writ petition under Article 226 of the Indian Constitution, wherein she claimed compensation, along with several other reliefs, for a Bangladeshi national Hanuffa Khatoon, who was subject to gang rape at Yatri Niwas of Howrah Station, Eastern Railways by many men which also included employees of the railway department. The Central Government was held vicariously liable to pay the compensation to the victim. In this case, the Apex Court asked the railway authority to pay Rs. 100,000 as compensation for the infringement of right to life of the victim.

The Apex Court later delivering the judgment in the case of *State of Gujarat v. High Court of Gujarat*[53] observed that in our effort to protect the human rights of the accused or the convicts we cannot ignore the victim or his family in case of his death or who is otherwise incapacitated due to criminal activities. Subsequently several similar judgments have been passed by the courts.

[51] (1996) 1 U.P.L.B.E.C.461
[52] AIR 2000 SC 988
[53] (1998) 7 SCC 392

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Thus, as the things stand, it is for the courts to provide relief to the victims based on the available laws. As on this day the available law is only in the form of sections 357, 357A of The Code of Criminal Procedure. If the is not in a position to pay then the court may make use of Section 357A Cr.P.C. and direct the State to pay the compensation.

Uttarakhand Sangharsh Samitee v. State of U.P.[54] In the Uttrakhand Stir (Rallyist) case, the Allahabad High Court delivered a path-breaking judgment in a group of six cases arising out of the incidents in Khatima, Mussoorie and Muzaffarnagar. The court in a historic decree awarded Rs. 10 lakh each to deceased victims' families and Rs. 10 lakh for rape victims judging the crime equivalent to death; Rs. 5 lakh to the victim of sexual molestation; and Rs. 2.5 lakh to Rs. 50,000 for less serious injuries. Thus, the court while advancing the cause of human rights and giving more teeth to the constitutional guarantee for a right to live with dignity vide Article 21, declared that the court itself could award compensation in a case of human rights violation.

In the path breaking case of *Laxmi v. Union of India*[55], An Apex Court bench headed by then CJI Lodha reportedly expressed alarm over the instances of acid attack by jilted lovers, Holding the offence to be serious violations of Fundamental Rights guaranteed under Articles 14,15,21, giving landmark judgment devised measures and relief to victims of acid attack. Invoking section 357A of the Code of Criminal Procedure (Amendment) Act, 2008 awarded Compensation to victims of acid attack to the tune of Rs. 3 lakhs. The Honorable Court Held, a uniform compensation of Rs. 3 lakhs should be paid by all States and Union Territories to victims of acid attack. It also directed incorporation of new sections 326A & 326B in The Indian Penal Code to deal effectively with case of acid attacks. The court further directed that – Rs. 1 lakh should be paid immediately within 15 days and the remaining Rs. 2 lakhs to be mandatorily paid within 2 months as expeditiously as possible – Authorities directed to give wide publicity to said directions.

[54] (1996) 1 U.P.L.B.E.C. 461
[55] AIR 2014 SC 129

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Sabana Katun v. The State of West Bengal & Ors[56], in this case, writ jurisdiction of the Calcutta High Court was invoked by a victim of acid attack to claim compensation for the injuries suffered by her, referring to the judgment of the *Apex Court in Laxmi v. Union of India*[57]. After being seriously injured and hospitalized for eighteen days she had informed the Chief Secretary, Government of West Bengal about the incident, praying for grant of compensation due to the injuries suffered by her. But as there was no response from the government she took the step to invoke the writ jurisdiction of the High Court. The Learned Counsel for the petition referred to the Apex Court judgment in *Laxmi v. Union of India*[58]and said that the victim was "entitled to a minimum of compensation of Rs. 3 lakhs from the State, that too within 15 days from the date of reporting the incident." He stated that lack of response from the State Government was violation of the order of the Supreme Court and thus, it was necessary that the High Court intervened in this matter. However, the Council for the State denying the intention of the State to disregard the order of the Highest Judicial Authority, referred to the West Bengal Victim Compensation Scheme, 2012 which was in operation in the State and contained provision concerning compensation to victims of acid attack. However, he also clarified that after the judgment of the Apex Court the quantum of compensation contained in the Scheme for such victims was due to be modified. He on various grounds attempted to refuse the obligation of the state to pay the compensation directly to the victim.

Referring to the relevant part of the judgment of the Supreme Court, the High Court observed, "It is manifest from the observations of the Apex Court as above that the Apex Court was grossly dissatisfied with the lack of uniformities in the "Victim Compensation Scheme" of different States Governments and the Union Territories and inadequacy of the amount of compensation. The Apex Court held that the minimum compensation would be at least Rs. 3 lakhs as the after care and rehabilitation cost and directed out the said amount a sum of Rs. 1 lakh to be paid to the Acid attack victim within fifteen days of occurrence of such incident or being brought to the notice of the State Government or Union Territories and the balance

[56] W.P. No. 34704 (w) of 2013
[57] AIR 2014 SC 129
[58] *Ibid*.

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Rs. 2 lakhs positively be paid within two months. The Chief Secretaries of different State Governments and the Administrator of the Union Territories were directed to ensure compliance."

The High Court finally directed the Chief Secretary of the State of West Bengal "to pay a total sum of Rs. 3 lakhs to the writ petitioner, an acid attacked victim and out of the said amount a sum of Rs.1 lakh be paid within fifteen days from the date of communication of this order and thereafter the balance amount be paid within two months thereafter as prescribed by the Hon'ble Apex Court in its order passed in connection with *Laxmi v. Union of India*"[59].

In the recent judgments in the case of *State v. Rangaswamy*[60]the landmark decision in the case of *Suresh & another v. State of Haryana*[61] was referred. The Apex Court in *Suresh's case* had ruled that if the Scheme announced by the State of Kerala in 2012 appeared to be higher, then all the High Courts were directed to adopt the compensation announced in the said Scheme. The object behind the same being that the victims of crimes cannot be differentiated in India and all victims wherever they are from would get similar compensation for the similar loss. It is reiterated in the said judgment that even when the cases end in acquittal or discharge, compensation needs to be paid to the victim. The Apex Court had further gone to direct the concerned Legal Services Authority to pay interim compensation if need be for rehabilitation of the victims of crime.

In *X' v. State of Punjab*[62],.The Division Bench of Daya Chaudhary & Sudhir Mittal, JJ. allowed the application for the enhancement of compensation to minor rape victim under Punjab Victim Compensation Scheme, 2017.An application for enhancement of compensation was made in this case which was awarded by Sessions Judge. The victim child was awarded compensation of Rs 6000 out of the amount of fine. The appeal was filed for enhancement of compensation which was earlier admitted. Victim (minor) through her natural guardian and mother also filed an

[59]*Ibid* .
[60] 2015(2) SCC 227
[61] Criminal Appeal No. 420 of 2012 ,decided on November 28,2014
[62] 2019 SCC Online P&H 1026, decided on 22-05-2019

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application under Section 482 Cr. P.C. read with Section 357-A Cr.P.C. seeking recommendation to Respondent 2 i.e. District Legal Services Authority to grant compensation to her under the Punjab Victim Compensation Scheme, 2017 framed under Section 357-A of Cr.P.C. Ravinder Kaur Manaise, Counsel for the applicant submitted that applicant-victim was five years of age at the time of occurrence and suffered injury. It was submitted that for her physical and mental rehabilitation adequate compensation is required to be awarded to her as per Punjab Victim Compensation Scheme, 2017.The Court referred to the Punjab Victim Compensation Scheme and noted the relevant clause of the said scheme as "the applicant is entitled to compensation, which is to be disbursed through the Bank account of the victim or through a designated person to be nominated by the Punjab Legal Services Authority or District Legal Services Authority as the case may be. The compensation is required to be paid in lump sum or in two instalments as decided by the Punjab Legal Services Authority or District Legal Services Authority." Regarding the amount of the compensation it was directed that "in case victim is less than 14 years of age, the amount of compensation is to be increased by 50% over the amount specified in the schedule, meaning, thereby, she is entitled to Rs 4,50,000." Thus, the petition was allowed and respondents were directed to grant the compensation to minor as per Punjab Victim Compensation Scheme, 2017. It was further directed that the Punjab State Legal Services Authority was at liberty to recover the amount so paid to the victim from the accused.

State of Haryana and others v. Vijjay kumar @ Pappu and another[63] in this case. The victim had suffered 16 percent burn injuries. Both the accused were convicted under section 326 A of IPC and were directed to pay the additional compensation of Rs.1,50,000 and further directed that state of Himachal Pradesh shall pay compensation as admissible under victim compensation scheme

To go further in Unnao rape case . The Unnao woman was kidnapped and raped by Sengar in 2017 when she was a minor. The rape complaint, however, was registered only after she attempted to immolate herself outside Chief Minister Yogi

[63] (2019) AIR(SC) 1543, (2019) 2 Law Herald (SC) 1463

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Adityanath's official residence in Lucknow. She took the extreme step after her father was allegedly thrashed by Sengar's brother, Atul Sengar, taken to jail instead of hospital even though he was grievously injured and died two days later in police custody. The matter came to light after a video clip showing Atul Sengar beating the father went viral on the social media. Amidst public outrage, the case was transferred to the Central Bureau of Investigation (CBI) and both the Sengars and two others were arrested. On July 28 last year, the rape victim was severely injured after the car in which she was travelling was hit by a truck. Two of her aunts were killed in the accident and she and her lawyer were critically injured. The family alleged foul play in the accident. The Supreme Court, taking cognizance of the rape survivor's letter written to then Chief Justice of India Ranjan Gogoi, had on August 1 transferred all five cases registered in connection with the incident from a Lucknow court to a court in Delhi with directions to hold trial on a daily basis and complete it within 45 days. Sengar, a four-time BJP MLA from Bangermau in Unnao district, was expelled from the party in August. The court had, on August 9, framed charges against the Sengar and Shashi Singh under Sections 120 B (Criminal Conspiracy), 363 (Kidnapping), 366 (Kidnapping or inducing a woman to compel for marriage), 376 (Rape) of the IPC and other relevant sections of the POCSO Act. District Judge Dharmesh Sharma imposed an exemplary fine of Rs 25 lakh in the case and had to be paid within a month. The court concluded that the conduct of Sengar was to intimidate the rape survivor. It also directed that the rape survivor be paid an additional Rs 10 lakh as compensation to the mother of the victim.[64]

Crime is undeniably one of the society's gravest quandary till date and as yet unsettled by law or punishment under any political system. The problem of bye-products of crime i.e. the victims is a complex one, involving conceptual, theoretical, philosophical and pragmatic considerations of great import and consequence. The struggle by victims to gain their formal rights within the criminal justice system continues on many fronts. Crime victims have long been a disentitled, exploited disenfranchised group and mistreated by the criminal justice system and forgotten or

[64] https://www.news18.com/news/india/kuldeep-singh-sengar-sentenced-to-life-imprisonment-in-unnao-rape-case-2430397.html visited on 13.01.2020

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ignored by the larger society. Once the state monopolized the right to criminal prosecution and converted the "wergild" or the compensation, that used to be paid to the victim, into a fine destined to the King's coffers, the victim became the "forgotten figure"-a legal non-entity. Every crime depicts the failure on the obligation of the state to respect, protect and fulfil the human rights of its subjects. Not only that every single crime, evidences failure on the part of state, to maintain law and order, harmony and tranquillity in the society, to protect life and property of the people and to use its authority to suppress crime and punish offenders. The recent infamous Asifa rape and murder followed by the most inhumane rape and burning tragedy of Hyderabad Doctor Priyanka Reddy on November 27, 2019 explains the sinister facet of human existence and inefficiency of the Criminal Justice System.

CRITICAL APPRAISAL

The seed of compensation for the contravention of the rights implicit in Article 21 was thus first sowed in the cases of Khatri, Sant, Bir and Veena Sethi, which sprouted with such a spirited growth that it finally enabled the Court to hold that the State is liable to pay compensation. This dynamic move of the Supreme Court resulted in the emergence of compensatory jurisprudence for the violation of right to personal liberty through the judgment in Rudul Sah. Despite rediscovering and surfacing of victims in current decades, a close look at the so called victim's initiatives and measures supposedly designed to help crime victims and alleviate their plight reveals that the metaphorical cry of "justice for victims" has been to quite an extent an empty slogan. Measures introduced to assist crime victims such as victim compensation, restitution, reparation, reconciliation, victim impact statements and victim's right of allocution have been described as political palliatives, political placebos and band aid measures.

There are some considerations for granting compensation such as, payment of compensation should be a matter of right. It should not be linked with the status of the offender. Changes must be made in the law making it mandatory to grant compensation to the victims. Victim compensation is one of the pillars of the victim assistance as it serves as the primary means of financial aid. If a victim's losses are covered by insurance schemes or other sources of payment, compensation from the

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State may be reduced or denied in serious offences emergency payments can also be made during the pendency of the case. In cases of violent crime, victims should receive compensation for their injuries emotional distress, loss of earnings and loss of maintenance as soon as possible after the crime has occurred, irrespective of whether an offender has been identified or not. In addition, where death has occurred, compensation should be paid for bereavement, funeral expenses and loss of dependency for the kin of the victim in case of indigent victims. The Council of Europe has adopted a Convention on the Compensation of Victims of Violent Crimes, which entered into force in 1988. The Convention sets also open to non-members of the Council of Europe.[65]

Despite significant progress in the field of victimology through the medium of judicial Activism, there are still many challenges being faced in India which demand more attention in today's time. Some of the following challenges and problems need adequate attention and effective solution:-

1. There is no separate law to deal with and compensate or restitute the victims of crime. There are provisions in some legislations but they do not serve for the whole purpose to deal with problems of victims. But continuous efforts are being done to enact a national law.
2. Crime damage our social fabric, and every victim of crime suffers. As a community, we respond by apprehending the perpetrator and punishing them for their criminal acts. But the criminal justice system must do more than punishing the criminal. It must seek to heal the wounds-emotional, physical and financial- caused by crime. This is difficult but essential goal. So, there is a need for renewal of emphasis and an enhanced sensitivity to the rights of the victim. These rights should be the central concern of those who participate in the criminal justice system and it is time all of us paid greater heed to the plight of the victim.
3. The Indian Criminal Justice System is not free from the problem of corruption of public officials which has worn the entire health of the society and therefore

[65] www.uncjin.org/Standards/9857854.pdf visited on 12.12.2019

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in return the people in all sections of the population are victimized. A lot needs to be done yet to achieve the purpose in true sense.

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