



# RESTORATIVE JUSTICE SYSTEM: Help To Decrease Fear for Victims, and Reduce Recidivism for Offenders

**Dr. Jyoti Yadav**

**Assistant Professor (Law)**

**Amity Law School**

**Amity University, Lucknow, INDIA**

## Abstract

Restorative justice maintains the damage caused by corruption when victims, offender and community member meet and decide how to resolve this problem by the method of transforming offenders. This can be achieved by not giving by the deterrent punishment but restoration of offenders.

Restorative justice is in place for last thirty-five years and it is implemented in fifty different countries across the world. It's a theory which emphasize repairing the harm caused by criminal behaviour to the whole society and it include all the stake holder for example police, judiciary, victim ,family, society etc. the theory transform people from revenge to compensation it helps to reduce repeating of offence by offender and it is process from criminal justice to restorative justice.

In this process of legal system of India, restorative justice helps in criminal victim mediation and reduces stress and traumatic related harm to the victim. This theory also provide both victim and offender satisfaction that actual justice is done by process of restoration.

## Introduction: The Concept of Restorative Justice

“It is the weakness of our jurisprudence that victims of crime and the distress of the dependants of the victim do not attract the attention of law. In fact, the victim reparation is still the vanishing point of our criminal law.”<sup>1</sup>

The concept of restorative or restorative justice has taken roots in the criminal justice system during 1970s. The concept of Restorative justice provides a balancing approach by ensuring the participation of all stakeholders in criminal justice administration. Definition of Restorative justice given by Tony Marshall is generally accepted. It states:

“Restorative justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.”<sup>2</sup>

One of the objectives of the Criminal Justice System is to provide justice to the victim of a crime.<sup>3</sup> The purpose of justice is not only to punish the offender but it is also to give the direction for restoring the life of the aggrieved persons. Although, the Judiciary or the State cannot restore the previous stage of the victims; however, there should be some remedial measure, which can help in restoring the life of the sufferer. Awarding compensation can be one of those remedial measures which Judiciary or the State tends to provide social justice to the aggrieved.<sup>4</sup>

The restorative justice in broad sense encourages to compensate the loss suffered and repair the position of the victim in the society to lead a respectful life.<sup>5</sup> The normative explanation of the Compensation is the monetary assistance by the Government to the victims of crime.<sup>6</sup> The literal meaning of the term Compensation means to compensate the loss or injury of a person. The underlying purpose of compensation is to make good the loss suffered by the aggrieved or dependants of the victim.<sup>7</sup> Compensation denotes a thing given to make equivalent or a thing has given to make good for loss, recompense, remuneration or pay.<sup>8</sup> The Black's Law Dictionary<sup>9</sup> defines the term compensation as “Compensation denotes payment of damages or any other act that court orders to be done by a person who has caused injury to another and must, therefore, ake the other whole.” The Cambridge

<sup>1</sup>Rattan Singh v. State of Punjab, (1979) 4 SCC 719.

<sup>2</sup> Tony Marshall, *Restorative Justice: An Overview*, <<http://library.npia.police.uk/docs/homisc/occ-resjus.pdf>>.

<sup>3</sup>Wemmers, J.A. M. *Victims in the Criminal Justice System* 3 (Kugler Publications, 1996).

<sup>4</sup>Thilagaraj, R., & Liu, J. *Restorative Justice in India: Traditional Practice and Contemporary Applications*. 78 (Springer Eds, (2017).

<sup>5</sup> D Miller, *Social Justice* 68 (Oxford: Oxford University Press, 1976)

<sup>6</sup> Van Ness, D.W., & Strong, K.H. *Restoring Justice: An Introduction to Restorative Justice*. 96 (Routledge, 2014).

<sup>7</sup>Latha, S. (2017). “Compensatory Jurisprudence in India,” In *Restorative Justice in India* 77-87 (Springer, 2017)

<sup>8</sup>*State of Gujarat v. Shantilal*, (1969) 1 SCC 509 : AIR 1969 SC 634

<sup>9</sup>*Black's Law Dictionary*, 7th ed, *sub verbo* “compensation”

Dictionary<sup>10</sup> defines the term Compensation as, “money that is paid to someone in exchange for something that has been lost or damaged or for some problem.”

The Compensation is a remedy to restore the life of aggrieved, but debate erupts “whether the compensation is a sole remedy?” While we analyse the compensation as a sole remedy for the infringement of right and loss of life or limb, then we have to make a difference in viewing that in light to restore justice to the victim. Hon'ble Orissa High Court in *Saraswate Parabhai v. Grid Corp. of Orissa*,<sup>11</sup> ruled that “It is the fact that perfect relief is barely possible and money cannot make good a physical structure of that has been battered and shattered” court referred to the Lord Morris in the case of *West v. Shephard*.<sup>12</sup> Justice requires that it should be equal in value, although not alike.

Critics feel that the major drawback of the restorative justice practice is that disparate treatment exists, for the outcome of any process would depend upon the personalities of the victim and the offender. After all, it has been argued, why should one offender receive a particular type of response because his victim is magnanimous, whereas another could receive a much harsher treatment because his victim is hard-hearted. It has also been stated that by following the restorative approach to justice, criminal justice is made civil justice, because of the fact that it effectively abolishes not only the punitive response, but also the very criminality of the offences with which it deals. Nevertheless, many jurists feel that the need of the hour is to have elements of the restorative method of punishment introduced into criminal justice systems worldwide.

Courts should be given the right to make compensation orders, victim-offender mediation schemes, etc. In restorative justice philosophy, there cannot be a neat distinction between minor offences and more serious ones, with the former being treated as civil matters whereas the latter are treated as crimes simply because the possibility of restorative justice in these cases simply does not exist. However, the Truth and Reconciliation Commission in post-apartheid South Africa for instance, is seen as a model of restorative justice practice, which more or less overturned traditional stereotypes when it dealt with the heinous offences committed during the apartheid era.

Accordingly, it is a collective effort where in the State, the offender, the victim and all other stakeholders have a meaningful role to play. Restorative justice largely emphasises on the principles such as,

1. Considering the guilty party responsible in a progressively significant manner.
2. Fixing the mischief brought about by the offense.
3. Accomplishing a feeling of recuperating for the person in question and the network.
4. Reintegrating the wrongdoer again into the network, and so forth.

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<sup>10</sup> Compensation, (n.d) *Cambridge Online Dictionary*, available at: <http://dictionary.cambridge.org/dictionary/english/compensation>.

<sup>11</sup> AIR 2000 Ori 13.

<sup>12</sup> (1964) AC 326.

This identifies three central elements in restorative justice: the importance of process, the notion of stakeholders, and the fairly wide-ranging aspirations for outcomes. Restoration is seen as a form of reintegration of the community and of individuals. Outcomes are measured mainly by the satisfaction of the stakeholders in each case. One of the aims of the restorative justice movement is to replace forms of State justice by changing the focus of the term criminal justice itself. There is a shift from assumption that it is a matter concerning only the State and the offender, towards a conception that it includes stakeholders, the victim and the community. It envisages the active participation of victim in the criminal justice process without having the effect of depriving offenders of safeguards and rights that should be assured to them in any processes fair trial<sup>13</sup>.

## **1. DEVELOPMENT OF RESTORATIVE JUSTICE IN INDIA THROUGH JUDICIAL PRONOUNCEMENTS**

The Judiciary has played an active role in the constitutional interpretation and devising compensation as a remedy for the violation of public laws or infringement of Fundamental Rights. Initially, the concept of the right to compensation has not been directly enumerated in the Constitution of India; however, after interpretation in various dictums, it has been recognized as an unenumerated constitutional right. The Constitutional Courts in awarding compensatory relief to the victims emphasized that the State has the duty to protect the fundamental rights of its subjects not only against the actions of its instrumentality but is also responsible for hardships on the victims on the grounds of humanitarian and obligation of social welfare, duty to protect its subject, equitable justice etc. The Supreme Court and the High Courts have adopted the restorative approach while protecting the infringement of the fundamental rights of the Constitution under Constitutional remedies, Article 32 and 226 respectively.

The scope of both provisions are more comprehensive and different while providing the compensatory remedy to a victim of fundamental rights. The Supreme Court empowered by Article 32 “to issue directions, orders or writs, whichever may be suitable for the enforcement of any of the fundamental rights conferred by Part III of the Constitution.” So, the Supreme Court may grant monetary reliefs under the Article 32 of the Constitution of India as an exemplary cost. Article 32 clause (1) vested the locus standi to approach the Supreme Court by suitable proceedings for the protection of the fundamental rights. Furthermore, the Apex Court under Article 32 clause (2) is free to devise any procedure for the enforcement of a fundamental right, and the Court has the power to issue any process essential in a given litigation.

The constitutional remedies as provided in Article 226 are broader than the remedies provided in Article 32. The language of this Article 226 guarantees an individual to move the High Court for enforcement of “the fundamental rights as well as for any other purpose,” i.e., for enforcement of any other constitutional rights. The High Court has vested broad power under this Article. Furthermore, it has been mention in the Article 226 “to issue to any person or authority” makes an entirely different from the scope of Article 32. Hence, the powers of High Courts vested under Article 226 are more extensive as compared to powers vested on the Supreme Court under Article 32. The

<sup>13</sup>Andrew Ashworth, “Responsibilities, Rights and Restorative Justice”, 42 Brit. J. Criminol 578 (2002).

power of the High Courts is not confined to the matter of the fundamental rights, but it is also expanding to the other legal rights. The High Courts have the power to award compensation in the violation of other legal rights.

The Supreme Court has started awarding compensation for the violation of fundamental rights as provided under the Constitution of India. In the case of Nilabati Behera, the Supreme Court has awarded an exemplary compensation to the victim for the custodial death of her son. However, the compensation as a remedy has established as a fundamental right by the case of RudulShah Subsequently, the Supreme Court has expanded the concept of Compensation for the infringement of fundamental rights as a tool to relieve the pain of the aggrieved. The Supreme Court in the case of Sebastian M. Hongray v. Union of India & Ors., awarded compensation of Rs. 1 lakh on account of the failure of the Government to produce in habeas corpus petition filed by his wife, as the person was missing from Army custody. Subsequently, in Mohan Lal Sharma v. State Of Uttar Pradesh, the Supreme Court observed that the detente is entitled to the right to compensation under the patronage of Article 21. Furthermore, in the case of Saheli v. Commissioner of Police, Delhi the Court observed that an action for compensation lies for bodily harm, including battery, physical injuries, death, assault, false imprisonment etc.

## **2. SHIFTING OF PARADIGM IN THE LEGISLATIVE FRAMEWORK FOR RESTORATIVE JUSTICE IN THE INDIAN CRIMINAL JUSTICE SYSTEM**

The code of Criminal Procedure, 1973 provides a provision for compensating the victims of crime under Section 357 but in this provision, the accused has to be pay compensation after his conviction. However, in the year 2008, a significant change in the criminal law has been brought in the India criminal justice system, the Indian Parliament has incorporated the concept of compensation for the victims of crime under the Criminal Procedure Amendment Act, 2008. Section 357A has been inserted in the Code of Criminal Procedure, 1973 for the compensation and assistance to the victims of crime. The new section directed every State Government in coordination with the Central Government to create a compensation scheme with the intention to give compensation to the aggrieved or his dependents who have suffered loss or injury as a result of the crime and requires rehabilitation. The Court has to recommend the District Legal Service or State Legal Service Authority under Section 357A to decide the quantum of compensation to be awarded to the victims. After getting the recommendation or application form the victims, the District Legal Service or State Legal Service Authority has to prepare a report within two months and submit to the concerned Court. After being satisfied with the recommendation, the court may award the compensation to the victims of the crime.

Although, there is no specific legislation for the rehabilitation of the victims of terrorist attacks in India; however, for last decade, several attempts have made by the Legislator of India to bring uniform law regarding the compensation to the victims of terror attacks. The Victims of Terrorism (Compensation and Rehabilitation) Bill, 2004 was introduced by the Raj Kumar Dhoot in a Private Members' Bill on 3rd December 2004 in the Rajya Sabha. The Bill advocated to establish a National Commission for Victims of Terrorism, victims may approach this commission to claim compensation and the Commission's decision shall be binding on the appropriate Government.



The next attempt was made on 19th December, 2008, when Shri Gireesh Kumar Sanghi, member Rajya Sabha introduced Private Members bill.

The Victims of Terrorism (Compensation and Miscellaneous Provisions) Bill. The Bill suggested to the appropriate Government to formulate rehabilitation package for the victims of terrorist violence by way of providing employment, vocational training, self-employment and such other measures as the Government may deem fit and necessary for the purposes of fulfilling objective of the bill. Again, in 2012, The Victims of Terrorism (Provision of Compensation and Welfare Measures) Bill, 2012 has been introduced in the Lok Sabha by Shri Chandrakant Khaire. In this 2012 Bill, the Legislator has suggested that the Central Government has to bear all the expenses of the victims and makes provision for their rehabilitation. However, all these bills become redundant, as no further action was taken by the Parliament.

### **3. ANCIENT**

Another interesting feature was that punishments in the form of fines were imposed for 'doing mischief' to trees and plants, i.e. degrading the environment. Wherever possible, the accused was given the chance to return stolen property or its monetary equivalent to the victim. Besides, the judges were expected to punish first time offenders lightly. Chapter XII of This was a unique system of accountability that successfully regulated the judicial decision making process, making it immune from corruption and bias. Today, a similar system is unthinkable, especially given the fact that in a country like ours, even the slightest criticism of the judges invites criminal sanctions against the critic by way of contempt of court laws. The system of laws and punishment for violation of the same was an integral component of the ancient Hindu philosophy and was not an external irritant forcefully imposed upon, and barely tolerated by the society—as was the case with the advent of the British and their legal system.

Post-modernism seeks to demolish the myth that the law speaks with one voice for all regardless of history, economics and social reality. The objective and neutral figure of justice has been revealed to be a myth, a dangerous anachronism that crushes, not the serpent of inequity and chaos, but the flower of human experience, beneath her feet. In rejecting totalizing narratives, and in embracing contextual narratives, recent critical challenges to the approaches to legal interpretation, from race and feminist theory and sentencing policy in particular, proceed in postmodernist fashion.

Law seeks to create a just society that is founded on certain basic norms and entitlements that allow for the greatest development of all members of society, without any regard to their position in said society, that have been created on the basis of economic status, religious identity, communal labels or gender, to take a few examples. All jurisprudence may be essentially boiled down to the fundamental question, what may be legitimately demanded by any group from the rest of society, which can be enforced through a formalized and ordered system.

### **4. INTERNATIONAL NORMS AND STANDARDS**

A similar urge can be read in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The General Assembly of the United Nations made a Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recognising the fact that millions of people throughout the world suffer harm as a

result of crime and the abuse of power and that the rights of these victims have not been adequately recognised. This Declaration played a vital role in placing a “victim justice system” in focus in lieu of the existing “criminal justice system”. It is considered as the “Magna Carta” of the rights of the victims and envisages a different procedure to relate international norms and standards on criminal jurisprudence to the municipal law and to work together for the overall development of a just and equitable society.

It calls for the strengthening and expanding funds for compensating victims of crime including the necessary material, medical, psychological and social assistance through governmental, voluntary, community based and indigenous means. The principles adopted in amply reflect the anxiety of international community. The basic principles adopted by the General assembly inter alia provide that the offenders should make fair restitution to victims, their families or dependants and restitution should be part of the sentencing in criminal cases<sup>8</sup>. It also calls for setting up a national fund to provide monetary compensation to the victim, when monetary compensation is not fully available from the offender.

### **Restorative Justice in European Countries:**

In the European Countries, the idea relating to the compensation to the victims of crime was prevailing since the 1970. The idea structured in the European Convention on the Compensation of Victims of Violent Crimes in 1983 by the Council of Europe This Convention seeks the Member States to harmonize the laws relating to compensation of victims of crime. The Convention makes an attempt that the member states should establish a compensation scheme for the victims of crime. The Convention suggests that the compensation has to be given by the State where the crime has happened. The compensation must be given to the citizens of the State where the crime committed and citizens of all Members of the Council.

After more than two decades gaps, the Council of Europe drafted guidelines for the Protection of Victims of Terrorist Acts. The Guidelines urged the Member States to take measures for the protection and assistance of the victims of the terrorist attacks. The States have to ensure that the families of the victims who have suffered psychological and physical loss must get compensation. Moreover, the compensation must be easily available to the victims of the terrorist attacks irrespective of any nationality. After these Guidelines, the compensation to the victims of the terrorist attacks has become a specific subject of discussion to restore the victims' lives or his/her dependents. The International Organizations have urged worldwide support and solidarity for the victims of the terrorist attacks. In 2006, the Council of Europe had made recommendations on the assistance to the victims of crime. In this Recommendation, the term “victim” has been defined broadly so as to include all the categories of victims of violent crimes and also the International crimes. On the basis of this Recommendation, the States have to provide without due delay sufficient compensation to the victims and immediate relatives of the victims.

The European Union expressed its concern regarding the victims of crimes and the victims of terrorist attacks in several green papers, framework decisions, recommendation which are issued by the European Parliament and the European Council. However, a visible action can be shown in the Council's Joint Action which is framed to counter the sexual exploitation of the child and human trafficking. How this is related to the topic The Framework Decision on the standing of victims in criminal proceedings of 15th March, 2001 has issued to provide compensation to the

victims of a crime by the accused. However, it has not mentioned anything regarding the accused person who has not identified or unable to pay the compensation.

Another important resolution regarding the role of the European Union in countering terrorism has been taken six days before the 11th September, 2001. In 2004, the European Council issued Directive (European Council Directive No. 2004/ 80/EC) to implement the Framework decision of the Union for the compensation to the victims of the crime. The Directive also proposes the rights of the victims of crimes to claim from the Member States and the States where the crime is committed. The Directive have suggested the minimum standard of procedure to obtain the compensatory relief as the similarities of the national laws of the States.

At this point it is fascinating to evaluate the judicial attitude in interpreting these provisions. The judiciary was at times reluctant to combine the punishment of fine with death penalty of life imprisonment. However, a different attitude can be observed in *Guruswamy v. State of T.N.* where the appellant had murdered his father and brother, Supreme Court reduced the punishment from death to life imprisonment, imposed a fine of Rs. 10,000, and directed it to be paid to the dependants of the victim. A casual look at this and subsequent cases reveals that often Supreme Court has adopted an attitude to reduce severe punishment and impose fine to compensate the dependants of the victim. In *Jacob George v. State of Kerala*, the trial court acquitted a homeopath, who caused death of a woman while causing miscarriage due to his negligence. The said acquittal was reversed by the High Court and awarded sentence of 4 years imprisonment and imposed a fine of Rs. 5000. The High Court directed that a sum of Rs. 4000 is to be paid to the children of the deceased towards compensation for the loss of their mother. The Hon'ble High Court refused to give him benefit of probation. Hence, the accused preferred an appeal under Art. 136 of the Constitution before the Supreme Court. The Supreme Court rightly upheld the conviction. But in the quest for rendering justice to the dependants of the victim, unfortunately the court side lined the true meaning of penology.

The theories of punishment got a shabby treatment at the hands of the court. The view expressed by the court that only in cases where death penalty is provided the retribution can have its full play, gives a new facet to the retributive theory of punishment. The preventive and deterrent theories also got a similar treatment from the Hon'ble Court. According to the court, the reformatory aspect has achieved its purpose by keeping the appellant inside the prison boundaries for about two months, which enabled him to know the trauma, which one suffers in jail, which would make him to refrain from such activities in future. The Supreme Court modified the sentence by reducing the substantive sentence to one already undergone by the accused and enhanced the fine to Rs. 1 lakh. The Court went on to observe that if the fine were not paid within 6 months; the original punishment would be reviving. Here it is to be noted that the court in its discourse had already opined that the sentence already undergone was capable of fulfilling the purpose of punishment. Now the question arises as to what is the purpose of such a revival?

The next question, which poses in mind about the judgment, is that of the revival of original punishment. It means that the court is not taking away punishment that is imposed by the High Court, but it is making a substitution of punishment. In fact, a perusal of the existing law reveals that, in case of default in payment of fine 1/4 of the maximum imprisonment provided for that offence can be imposed. In the present case under reference, the offence is under S. 314 of IPC for which the maximum punishment provided is 10 years imprisonment with or without fine.



Therefore, the maximum sentence that can be imposed in case of default is only 3 years and 3 months imprisonment. The imprisonment cannot exceed the limits prescribed under S. 65 of IPC. This provision is not envisioning the revival of punishment. The section is not providing the power to impose an additional term to the substantive part of imprisonment. But, imprisonment is simply for non-payment of fine and if a part of it is remitted proportionate, reduction can be given in imprisonment also. Therefore, the court clearly erred in holding that in case of non-payment of fine the imprisonment will revive. It is bewildering to see that it may give rise to the presumption that the wealthy and influential culprit can purchase sentence according to their convenience. Anyhow, it cannot be read into any part of the procedure that for awarding compensation the court can take into consideration the financial status of the accused or his reputation. In the name of victim compensation, there is no power to substitute compensation in place of substantive a punishment.

In *Dileep Singh v. State of Bihar*, the Supreme Court observed that though there is no evidence to establish beyond reasonable doubt that the accused made a false or fraudulent promise to marry, there can be no denial of the fact that the accused did commit breach of the promise to marry, for which the accused is prima facie accountable for damages under Civil law. The accused was prepared to pay a sum of Rs. 50,000 by way of monetary compensation irrespective of acquittal. Though the said amount is not an adequate compensation, the Supreme Court was not inclined to call upon the accused to pay more for more than one reason: firstly, the accused has been in Jail for about two years by now; secondly, the accused belongs to a backward class and his family is not affluent though they have some agricultural lands; lastly, the incident took place about 15 years back and in the supervening period, the prosecutrix as well as the accused is married and he has two children. In these circumstances, the Supreme Court accepted the offer of the accused. In *Baldev Singh v. State of Punjab*, the Supreme Court extracted the following passage highlighting the importance of restitutive justice under S. 357 occurring in B.B. Mitra's Code of Criminal Procedure:

“S. 357(a) Scope... The power of court to award compensation to victims under S. 357 is not ancillary to other sentences but is an addition thereto. It is a measure of responding appropriately to crime as well as of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes, a step forward in our criminal justice system. Therefore, all courts are recommended to exercise this power liberally to meet the ends of justice in a better way. Any such measure, which would give the victim succour, is far better than a sentence by deterrence. Sub-s. (3) of S. 357 provides for ordering of payment by way of compensation to the victim by the accused. It is an important provision and it must be noted that power to award compensation is not ancillary to other sentences but it is in addition thereto.... In awarding compensation, the court has to decide whether the case is fit one in which compensation has to be awarded. If it is found that compensation should be paid then the capacity of the accused to pay compensation has to be determined. It is the duty of the court to take into account the nature of crime, the injury suffered, the justness of the claim for compensation and other relevant circumstances in fixing the amount of compensation.”

The court, while upholding the conviction of the appellants, directed to pay by way of compensation a sum of Rs. 35,000 each to the wife of the deceased and her children for the irreparable loss due to the death of Balbir Singh at the hands of the accused persons who have been convicted and sentenced to the term of imprisonment already

undergone by them. The court directed to pay the same within a period of 3 months from date of order and If it is not so paid, the amount shall be recovered by the persons entitled to the amount from the appellants as if the direction is a decree passed against them by court. The court also said that If not recovered, the accused shall suffer the balance of the term of imprisonment as imposed by the trial court, which shall stand revived.

The Supreme Court observed that in some cases award of compensation to the victim serves better purpose than deterrent punishment to the offender. However, it may be noted that the power to award compensation is not ancillary to other sentence but it is in addition thereto. Therefore, it is evident that the court is having no power to substitute compensation with any other forms of punishment.

In Suresh Balkrishna Nakhava v. State of Maharashtra, the prosecutrix. , matured around 15, was assaulted by the appealing party a few times. Because of the risk of the denounced, the prosecutrix never educated anyone about these episodes. The preliminary court sentenced the denounced. While the intrigue was pending under the watchful eye of the High court the spouse of the charged expressing her poor foundation and her endeavour to settle the issue documented a sworn statement. She swore under the watchful eye of the High Court that she offered her decorations to enough repay the person in question and the blamed is the sole breadwinning part for the family.

She argued that if the charged were sent to jail, spouse youngsters and matured guardians would starve. While trying to adjust the enthusiasm of the person in question and enthusiasm of the wards of the charged, court granted sub-least sentence gave under S. 376 of IPC and coordinated to store Rs. 4 lakhs raised by the spouse of the blamed for the future support for the person in question. Here additionally it is doubtful that the way of thinking of the stipulation under S. 376 of IPC is secured or not. It is far-fetched whether the court can think about the sum kept by the spouse of the charged in the bank for the support of the person in question or the reality of reception of the kid resulting from the occurrence in a well off family are abundant purposes behind granting a sub-least sentence This kind of reduction in sentence has been widely disapproved by the victim rights movement. Jeremy D. Andersen states:

“Although the victims' rights movement generally stresses retribution, and such notions do appear throughout criminal law sentencing, it is unclear why its use requires the reduction of criminal sanctions, as is seen in practice.”

This sort of interpretation happens in judicial decision-making since there is no alternate way for doing justice to the victim of crime in India at present except S. 357 of CrPC and S. 5 of the Probation of Offenders Act which is used so sparingly by the courts. It is to be noted that section S. 357 of CrPC or S. 5 of the PO Act will be operative only when the accused is convicted. It is all the more known, how difficult it is to have a conviction in criminal cases since even an iota of doubt can result in the acquittal of the accused. Therefore, it the need of the day to develop a comprehensive scheme to effectively compensates the victims of crimes. In the Delhi Domestic Working Women's Forum case the Supreme Court of India had called upon the need to set up a Criminal Injuries Compensation Board for rape victims within 6 months. The Supreme Court had suggested that this board should give compensation whether or not a conviction takes place. The Supreme Court explained the justification for this proposal as under—

“It is necessary, having regard to the Directive Principles contained under Art. 38(I) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example are too traumatised to continue in employment. Compensation for victims should be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board, whether or not a conviction takes place. The board will take into account pain, suffering and shocks as well as loss of earnings due to pregnancy and the expenses of the child but if this occurred because of the rape. In the present situation, the third respondent will have to evolve such scheme as to wipe out the fears of such unfortunate victims.

In Bodhisattwa Gautam's case, The Supreme Court again emphasized the above choice and further set out that between time remuneration ought to be granted to the injured individual in fit cases and there ought to be arrangement for the equivalent in the plan. The law commission of India in its 154th Report made a nitty gritty investigation of the need to fuse remedial equity in the criminal system in India. The Law Commission of India which made an assessment of corrosive assault cases again underlines the dire requirement for a plan of remuneration for the unfortunate casualties since in such cases the exploited people need to experience different medical procedures costing lakhs of rupees and are likewise in earnest need of restoration as they frequently need monetary assistance to exist as will be unable to look for work. The Law Commission in its 226th Report recommends that a law known as "Criminal Wounds Remuneration Act" be sanctioned as a different law by the Legislature.

This law ought to give both break and last fiscal remuneration to casualties of specific demonstrations of viciousness like assault, rape, corrosive assaults, and so on and ought to accommodate their clinical and different costs identifying with restoration, loss of profit, and so on. Any remuneration previously got by the injured individual can be considered while processing pay under this Demonstration. Subsequent on the suggestions of the Law Commission of India, The Criminal Method Code has been revised to consolidate S. 357-A to space in a plan of unfortunate casualty pay. brought into the code characterize an "unfortunate casualty" to mean an individual who has endured any misfortune or injury brought about by reason of the demonstration or exclusion for which the blamed individual has been charged and incorporates their gatekeeper or lawful beneficiary. S. 357-An accommodates injured individual pay plot.

In like manner, each State Government needs to set up a plan as a team with the Focal Government for giving assets to the reason for remuneration to the person in question or his wards who have endured misfortune or injury because of the wrongdoing and who, require restoration. The Locale Lawful Help Authority or the State Lawful Assistance Authority has been enabled to choose the quantum of remuneration; they can practice this force when the court makes proposal to pay. In the event that the preliminary court after finish of the preliminary is fulfilled, that the remuneration granted under S. 357 is not sufficient for such recovery, or where the cases end in quittance or release and the injured individual must be restored, it might make suggestion for remuneration. The plan is additionally

stretched out to the situations where the guilty party isn't followed or recognized, however the unfortunate casualty is distinguished, and where no preliminary happens.

In such cases the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation. The State or the District Legal Services Authority can award the compensation after conducting an enquiry which is to be completed within two months. It is also having power to order for immediate first aid facility or medical benefits to be made available free of cost to alleviate the suffering of the victim or any other interim relief. S. 265-E (a) deals with the power of the court to award compensation where of plea bargaining happens. As it is a newly incorporated provision the impact of it in the actual working of compensatory jurisprudence is yet to be seen.

The new law limits the judicial discretion in awarding compensation. It is creating an additional remedy in cases which are covered under S. 357 and a new remedy in case the offender is not identified and in cases where the prosecution results in acquittal or discharge. In cases which are coming before the court the court can exercise its discretion to recommend for additional compensation if the compensation awarded under S. 357 is not sufficient. The court can also make recommendation to pay the compensation in fit cases even if there is acquittal or discharge. But the quantum of compensation is to be determined by the Legal Service Authority. In case the court process is not involved i.e. where accused cannot be identified, the full discretion vests with the legal service authority. The new law does not create clarity in law. It is only a piecemeal legislation. Evidently the power of court to recommend for additional compensation can be exercised only in cases where the court is imposing a fine or where the court feels that the offender is not capable of paying adequate compensation.

However, in such cases the victim has no right to approach the Legal Service Authority for compensation or for enhancement of compensation. But if the offender is not identified the victim/dependant will get a right to approach the authority without any involvement of the court. This seems to be an anomaly in the law to be appropriately remedied as it is irrational and illogical to make such a distinction. There must be a common authority who is competent decide all such cases of compensation. They also does not provide for any effective participation of the victim in the Criminal Justice Process as envisaged by the restorative justice movement, thus making it an incomplete code. The new amendment also does not provide for any uniform scheme of compensation throughout India. It is left to the discretion of each individual State to formulate the scheme there by making it a disparate one if implemented.

- (a) Such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and
- (b) Such costs of the proceedings as the court think reasonable.

## **5. CONCLUSION**

It is high time that the spirit of restitutive justice is to be carried further to develop a parallel and effective remedy by a separate legislation under which the victim should be able to seek compensation before a court of law irrespective of whether the accused is convicted or not. The Indian Judiciary has devised new remedies which

unfortunately are not explicitly enumerated in any substantive law in India. Granting compensation to the victims will be a revolutionary step and effective remedy to a victim. The criminal justice system of India is adopting the restorative approach for the victims of crime to meet the ends of justice. The law must also provide for the resources to meet the needs of victim. It is also desirable to keep a part of the prison wages earned by the criminal for the welfare of the victim of the crime committed by him. The position of the victims become worst as there is no specific law for the compensation and rehabilitation.

The possibility of an Insurance Scheme in line with the Public Liability Insurance can also be probed into as it is the bounden duty of the State to protect the life and liberty of every individual and in case of the failure to discharge it satisfactorily to compensate the victim and his dependents. This type of change in law may advance the cause of the victim long way forward. The objectives of victim right movement should properly reflect in any new legislation. The legislature could have tried to incorporate the elements of restitution, though it has debatable merits and demerits in the light of decreasing number of convictions. The new amendment to the Criminal Procedure Code is highly unsatisfactory and need to be revised according to the new outlook in the criminal Justice System and new set of international norms. The State should bring about a comprehensive scheme which is balancing the rights of the victim as well as the accused instead of piece meal legislation.

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