

# **Reparative Justice to Victims under Criminal Justice System in India**

**Bonani Goswami**

Content Writer Law Colloquy

Email: bonani.legal3@gmail.com

## **Abstract**

Reparative Justice is a victim-centric approach and has gained utmost importance in criminal justice systems globally. It connotes reparation of loss suffered by victims resulting from any incident of crime, for instance; physical, mental, economical etc. Compensation to victims, trauma counselling to victims, free medical treatment, establishment of a victim friendly system are some of the means of reparative justice. History reveals the importance this very kind of justice traditionally, though, it lost recognition during the middle ages when state used to be the sole collectors of fines from criminals. Modern reparative justice system was introduced in the year 1950 with the initiative of the British Magistrate Margery Fry. Modern reparative justice is also the outcome of various global revolutions and also the General Assembly's adoption of UN Declaration in 1985. India's legal framework had provisions of victim compensation prior to 2009 Cr.PC. amendment but those were sparingly used. It was ultimately the 154<sup>th</sup> Law Commission Report & Malimath Committee's report which emphasized the importance of reparative justice to victims. The significant Cr.pc. amendment in the year 2009 was a turning point to India's victimology, a victim-centric system was initiated. This paper, discusses the implementation of victim compensation scheme referring the publicized data of National Legal Services Authority. At present India's legal framework provides for victim compensation and treatments to the victims. But it is still silent on other aspects like trauma counselling for victims, establishment of victim-friendly judicial system, establishment of a victim friendly society etc. though landmark judicial pronouncements by Indian Judiciary has been playing pivotal roles from time to time. Thus, it can be said that we are at a very preliminary stage concerning reparative justice to victims in India's Criminal Justice System.

**Key Words:** *victim, criminal procedure code, reparative justice, victimology, criminology*

## **Introduction**

In worldwide criminal justice system, Reparative Justice is a very modern and important concept. According to Cambridge English Dictionary the meaning of reparation means “payment for harm, loss, or damage that has been caused to a person or an organization, or the fact of making such a payment”. According to Merriam Webster Dictionary Reparation means “the act of making amends, offering expiation, or giving satisfaction for a wrong or injury”. Therefore, it is obvious that in every type of crime the victim or the victim’s family are the one who suffers loss/damage whether physical, mental, economic or material. Traditional criminal Justice system always focused mainly on aspects of punishment and reformation of the accused and victims achieved nothing out of it. Criminal Procedure Code and Probation of Offenders Act had clear provisions for victim compensation but due to deficiencies in our system was always a vanishing point. Although, compensation to victims found its place at times through various judicial pronouncements for protection of fundamental rights. More than four decades ago Justice Krishna Iyer rightly said “It is weakness of our jurisprudence that victims of crime and the distress of their dependents of the victim do not attract the attention of law”. Reparative Justice is a victim-oriented approach which has gained importance in modern age worldwide. India’s recent legislative framework on Criminal Procedure Code and its effective implementation has become a turning point in Indian Judicial System.

## **Research Methodology**

This article is a study for the better understanding of existing status of reparative justice in India’s criminal justice system. The research is qualitative descriptive research. The method applied is secondary mainly from online sources and books. The online sources are official websites of National Legal Services Authority, articles published in journal of South Asian Society of Criminology & Victimology, All India Reporters, Supreme Court Cases online. Source of Offline data collection is The Code of Criminal Procedure, 1973.

## **Historical Significance**

The concept of victim-centric reparative justice was present historically both in eastern and western parts of the world. Significance of victimology was found in ancient Hammurabi's code and ancient Greek civilization. This concept was also promoted by Manu in Manu smriti. Chapter VIII, verse 287 of Manu smriti clearly says that "If limb is injured, a wound is caused or blood flows, the assailant shall be made to pay the expense of the cure or the whole". During the stone age criminal justice implied an eye for an eye or money. But this concept vanished gradually with the advent of monarchical system when king was considered to be the head of justice giver, one who pronounced punishments to offenders. The King generated the concept of receiving monetary compensation. The idea of modern-day victim compensation was introduced in 1950 by a British Magistrate and a social reformer named as Margery Fry.

United States and other European countries started a movement and the concept of victim compensation gained significance. Canada and several states within the United States began providing victim compensation. In the year 1985, General Assembly adopted UN Declaration on Basic Principles of Justice for Victims and Abuse of Power. This declaration was globally accepted.

## **India's Existing Legislative Framework**

Reparative Justice in India is recognised by various legislative frameworks like Constitution of India, Probation of Offenders Act and also by Code of Criminal Procedure. Constitution of India guarantees fundamental rights for the people of India and any infringement of rights leads to remedies. Indian Judiciary with the help of Constitutional machinery has fixed compensations in different cases for various infringements of rights of the victims and therefore has ensured reparative justice in the judicial history. Probation of Offenders Act ensures liability upon convicts. Code of Criminal Procedure at its inception included provisions for victim compensation but recent amendment has brought remarkable changes in the reparative justice system of India. The present legislative framework of our country is discussed below in detail.

### **Constitution of India**

Constitution is the Supreme Law of the land. It lays down fundamental rights for the people of the country. At the same time, it vests responsibilities upon the state to protect and promote the fundamental and other rights of public. Supreme Court & High Courts being the guardians of the Constitution uplifts constitutional values and promotes public welfare. Public can approach Supreme Court and High Courts for enforcement of their rights under Article 32 & 226 of the Constitution. States are made liable to the victims for any infringement of rights. Setting of

liabilities differs from case to case. Indian Judiciary while interpreting the Constitution has played significant roles from time to time in providing reparative justice to victims whose fundamental/other rights has been infringed in one or the other way.

In *Rudal Shah v. State of Bihar* (1983) 4 SCC 141, Hon'ble Supreme Court ordered the state to pay a compensation of Rs 35,000 to the victim who was illegally detained for 14 years even after Court's acquittal order.

In *Bhim Singh v. State of Jammu & Kashmir* (1984 Supp (1) SCC 504) , the State was ordered to pay a compensation of Rs 50,000 to the victim MLA who was illegally arrested and restrained from attending legislative assembly.

In *Meza Singh v. SHO Police Station Zira* (1991 ACJ 439), where compensation was awarded for illegal arrest and detention of petitioner's son.

In *Prem Shankar Shukla v. Delhi Administration* (1980 AIR 1535), compensation was awarded to victim's family for a serious issue of custodial death.

In *Nilabati Behra v. State of Orissa* (1993 AIR 1960) , the victim was compensated with Rupees One lakh fifty thousand who was illegally arrested and whose injured body was found in a railway track.

*SAHELI v. Commissioner of Police* (1990 AIR 513), where court ordered Delhi Administration to pay a compensation of Rs 75,000 to one Kamlesh Kumari whose son died because of police's ill-treatment.

In case of *Bodhi Satta Gautam v. Subhra Chakraborty* (1996 SCC (1) 490), Hon'ble Supreme Court invented the concept of interim compensation. In this case the accused Bodhi Satta married one Subhra Chakraborty and cause innumerable harm to the victim including forced abortion. Hon'ble Court in this case ordered for interim compensation of Rs 1000 to the victim till the criminal case continues.

## **Probation of Offenders Act, 1958**

### **Section 5(1) in The Probation of Offenders Act, 1958**

(1) The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay—

(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 thinks reasonable.

### **The Code of Criminal Procedure, 1973**

Before 2009 amendment, Criminal Procedure Code already had provisions for compensation but the provisions were invoked sparingly. Moreover, there was no clear mention about compensation to ‘victims. Surprisingly, the Code of Criminal Procedure didn’t define ‘victim’. It was by the 2009 amendment the definition of ‘victim’ was laid down in the code under Section 2(wa). This indicates that a victim-oriented approach is very recent in our criminal justice system.

According to Section 357 Cr.PC. a Court may impose sentence of fine or a sentence where fine forms a part and that fine recovered may be applied in defraying expenses incurred in prosecution, in the payment to any person as compensation for any loss or injury caused by the offence, as damages to dependents of deceased where death is consequence of such offence and to a purchaser of stolen property incurring loss.

Section 358 Cr.pc. provides the scope of compensation to persons who are groundlessly arrested. Section 359 Cr.pc. provides for compensation to complainant on conviction of the accused in non-cognizable offences.

The Code of Criminal Procedure, 1973 cannot be therefore regarded as a victim centric legislation. Compensation referred to in the provisions was meant for the expenses of prosecution. In rare cases it was given to any person suffering loss or dependents of deceased. Moreover it didn’t recognise who a victim is and thus the concept of reparative justice to victims was almost negligible.

## **Turning Point in Victimology: 2009 CrPC Amendment**

The Fourteenth Law Commission in 1996 in its 154th Report on the Code of Criminal Procedure suggested a comprehensive victim compensation scheme to be administered, on recommendations of a trial Court, by the Legal Services Authorities constituted at the District and State levels under the Legal Services Authorities Act, 1987. The Commission reemphasized mainly on UN Declaration on Basic Principles of Justice for Victims adopted in 1985. The Law Commission desired the District and State Legal Services Authorities to have special considerations while compensating victims of custodial crimes, and of child abuse; rape victims, and physically and mentally disabled victims of crimes. The National Women's Commission, in its report 'Revised Scheme for Relief and Rehabilitation of Victims of Rape, 2009-10', has recommended that after a rape victim lodges an FIR, she should award compensation of Rs. two lakhs which may be increased to three lakhs in special cases. The first instalment of Rs 20,000 has to be given to the victim when she registers the FIR, while the second instalment of Rs 50,000 is recommended after the Board examines the case and determines the nature of rehabilitation measures required. The remaining amount has to be disbursed within one month of the victim's evidence in court or one year of the receipt of application. The Commission has also recommended the setting up of Criminal Injuries' Compensation Board at the District, State and National levels. Such boards have been entrusted with a wide range of activities, not only relating to financial assistance but also including medical, psychological and counselling services and affording holistic protection and support to the victim. Malimath committee recommendations were also based on a victim-oriented approach. The Committee made a series of recommendations to ensure justice to the victims.

- The victim should be allowed to participate in cases involving serious crimes and also be given adequate compensation.
- If the victim is dead, the legal representative shall have the right to implead himself or herself as a party, in case of serious offences.
- The State should provide an advocate of victim's choice to plead on his/her behalf and the cost has to be borne by the State if the victim can't afford it.
- Victim compensation is a State obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organised in a separate legislation.
- A Victim Compensation Fund can be created under the victim compensation law and the assets confiscated in organised crimes can be made part of the fund.

Finally, in the year 2009, a significant amendment took place in the Criminal Procedure Code which can be termed as a turning point in victimology. A definition of victim under section 2(wa) was added. According to Section 2(wa), 'victim' means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression 'victim' includes his or her guardian or legal heir.

Other important additions were provisions for Victim Compensation Scheme under Sections 357 A & 357 B and treatment to victims under Section 357 C. Reparative Justice includes compensation, treatment, and trauma counselling and positive societal attitude toward victim. Indian legislative framework has therefore obtained a satisfactory stage in favour of victims.

### **Victim Compensation Scheme (Section 357A)**

1. Every State Government in coordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.
2. Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).
3. If the trial Court, at the conclusion of the trial, is satisfied that the compensation awarded under section 357 is not adequate for such rehabilitation or where the cases end in acquittal or discharge and victim has to be rehabilitated, it may make recommendation for compensation.
4. Where the offender is not traced or identified, but the victim is identified and where no trial takes place, the victim or his dependents may make an application to the State or District legal Service Authority for award of compensation.
5. On receipt of such recommendations or on the application under subsection (4), the State or District Legal Services Authority shall after due enquiry award adequate compensation by completing the enquiry within two months.
6. The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first aid facility or medical benefits to be made available free of cost on the certificate of police officer not below the rank of officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

### **Compensation to be in addition to fine under section 326A or 376D of Indian Penal Code. (Section 357 B)**

The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under Section 326 A or section 376 D of the Indian Penal Code.

### **Treatment of Victims (Section 357C)**

All hospitals, public or private, whether run by Central Government, the State Government, local bodies or any other person, shall immediately provide first aid or medical treatment free of cost, to the victims of any offence covered under section 326a, 376,376A, 376B,376c, 376C, 376 D or 376 E of the Indian Penal Code and shall immediately inform the police of such incident.

### **Implementation of The Victim Compensation Scheme**

Guidelines were framed in the year 2015 for the effective implementation of the victim compensation scheme. It came up with the name of Central Victim Compensation Fund guidelines with the following objectives:

- To support and supplement the existing victim compensation schemes notified by States/UTs
- To reduce disparity in quantum of compensation amount notified by different states for victims of similar crimes.
- For effective implementation of victim compensation scheme under section 357A of Cr.P.C.

The Central Victim Compensation Fund was initially started with a corpus amount of Rs 200 crore which was sanctioned by the ministry of Finance. Compensation to the victims is supposed to be paid by the State and union territories and later on reimbursed from the Fund. Details of every victim compensated are maintained in Citizen's portal. A victim can move an application to District Legal Service Authority for compensation under the scheme. The District Legal Services Authority or State Legal Services Authority can compensate the victims based on an enquiry. Transfer of funds are through electronic medium.



In the year 2015 minimum amount of compensation for different cases were fixed by the Ministry of Home Affairs

| <b>Sl. No</b> | <b>Description of Injury</b>   | <b>Minimum amount of Compensation</b> |
|---------------|--|---------------------------------------|
| 1.            | Acid Attack  | Rs 3 Lakhs                            |
| 2.            | Rape   | Rs 3 Lakhs                            |
| 3.            | Physical Abuse of minor  | Rs 2 Lakhs                            |
| 4.            | Rehabilitation of victims of Human Trafficking   | Rs 1 Lakh                             |
| 5.            | Sexual assault (excluding rape)  | Rs 50,000/-                           |
| 6.            | Death  | Rs 2 Lakhs                            |
| 7.            | Permanent Disability (80% or more)   | Rs 2 Lakh                             |
| 8.            | Partial Disability (40% to 80%)  | Rs 1 Lakh                             |
| 9.            | Burns affecting greater than 25% of the body (excluding acid burns)  | Rs 2 Lakh                             |
| 10.           | Loss of foetus   | Rs 50,000/-                           |
| 11.           | Loss of fertility  | Rs 1.5 lakhs                          |
| 12.           | Women victims of cross border firing<br>a. Death or permanent Disability (80% or more)<br>b. Partial Disability (40% to 80%) | Rs 2 Lakh<br><br>Rs 1 Lakh            |

Table no:1 (source: <http://dlsa.org/wp-content/uploads/2015/12/337686203-Delhi-Victim-Compensation-Scheme-2015.pdf>)

For victims who are younger than 14 years shall be compensated an increase of 50% over the amounts specified in the table.

**Statistical Information in R/O Victim Compensation Scheme u/s 357-ACr. Pc.  
April 2019 to March 2020**

| S.NO | SLSA                      | Applications         |                                 |                  |         |         | Compensation        |
|------|---------------------------|----------------------|---------------------------------|------------------|---------|---------|---------------------|
|      |                           | Recd. by<br>LSI* (A) | Recd. by<br>any<br>Court<br>(B) | Total**<br>(A+B) | Decided | Pending | Awarded in<br>(Rs.) |
| 1    | Andaman & Nicobar Islands | 0                    | 0                               | 0                | 0       | 0       | 0                   |
| 2    | Andhra Pradesh            | 43                   | 43                              | 86               | 17      | 71      | 6050000             |
| 3    | Arunachal Pradesh         | 21                   | 2                               | 23               | 17      | 0       | 5650000             |
| 4    | Assam                     | 284                  | 580                             | 864              | 777     | 617     | 79262000            |
| 5    | Bihar                     | 625                  | 271                             | 896              | 405     | 581     | 68825707            |
| 6    | Chhattisgarh              | 366                  | 515                             | 881              | 488     | 635     | 38978000            |
| 7    | Dadra & Nagar Haveli      | 2                    | 4                               | 6                | 5       | 0       | 1150000             |
| 8    | Daman & Diu               | 0                    | 0                               | 0                | 0       | 0       | 0                   |
| 9    | Delhi                     | 1050                 | 1605                            | 2655             | 2574    | 1361    | 672671700           |
| 10   | Goa                       | 0                    | 0                               | 0                | 0       | 0       | 0                   |
| 11   | Gujarat                   | 457                  | 225                             | 682              | 310     | 545     | 87854870            |
| 12   | Haryana                   | 58                   | 449                             | 507              | 505     | 100     | 150470000           |
| 13   | Himachal Pradesh          | 138                  | 146                             | 284              | 127     | 5       | 15667500            |
| 14   | Jammu & Kashmir           | 0                    | 30                              | 30               | 30      | 0       | 6025000             |
| 15   | Jharkhand                 | 238                  | 560                             | 798              | 484     | 1149    | 98935000            |
| 16   | Karnataka                 | 614                  | 329                             | 943              | 839     | 1521    | 110382213           |
| 17   | Kerala                    | 143                  | 184                             | 327              | 119     | 159     | 25079582            |
| 18   | Lakshadweep               | 0                    | 0                               | 0                | 0       | 0       | 0                   |
| 19   | Madhya Pradesh            | 821                  | 748                             | 1569             | 961     | 570     | 92249103            |
| 20   | Maharashtra               | 124                  | 67                              | 191              | 116     | 272     | 9176000             |
| 21   | Manipur                   | 0                    | 12                              | 12               | 0       | 47      | 0                   |
| 22   | Meghalaya                 | 74                   | 17                              | 91               | 75      | 0       | 785000              |
| 23   | Mizoram                   | 181                  | 26                              | 207              | 44      | 78      | 11820000            |

| S.NO | SLSA               | Applications      |                        |               |              |              | Compensation      |
|------|--------------------|-------------------|------------------------|---------------|--------------|--------------|-------------------|
|      |                    | Recd. by LSI* (A) | Recd. by any Court (B) | Total** (A+B) | Decided      | Pending      | Awarded in (Rs.)  |
| 24   | Nagaland           | 0                 | 19                     | 19            | 18           | 12           | 2465000           |
| 25   | Odisha             | 1503              | 233                    | 1736          | 1219         | 2312         | 154859000         |
| 26   | Puducherry         | 0                 | 9                      | 9             | 1            | 0            | 750000            |
| 27   | Punjab             | 663               | 151                    | 814           | 293          | 312          | 60538081          |
| 28   | Rajasthan          | 978               | 1032                   | 2010          | 2242         | 451          | 327520000         |
| 29   | Sikkim             | 0                 | 27                     | 27            | 27           | 0            | 2000000           |
| 30   | Tamil Nadu         | 666               | 68                     | 734           | 274          | 826          | 36262000          |
| 31   | Telangana          | 3                 | 29                     | 32            | 33           | 28           | 2200000           |
| 32   | Tripura            | 51                | 23                     | 74            | 47           | 52           | 14315000          |
| 33   | U. T. Chandigarh   | 12                | 10                     | 22            | 16           | 16           | 3804890           |
| 34   | Uttar Pradesh      | 59                | 0                      | 59            | 59           | 0            | 10887500          |
| 35   | Uttarakhand        | 10                | 40                     | 50            | 55           | 33           | 12095000          |
| 36   | West Bengal        | 208               | 234                    | 442           | 246          | 8            | 44420000          |
|      | <b>Grand Total</b> | <b>9392</b>       | <b>7688</b>            | <b>17080</b>  | <b>12423</b> | <b>11761</b> | <b>2153148146</b> |

Table no: 2 (source: <https://nalsa.gov.in/statistics/r-o-victim-compensation-schemes-report/r-o-victim-compensation-schemes-april-2019-to-march-2020>)

\*Legal Service Institution

\*\*Including Court Orders

## **Landmark Judicial Pronouncements in relation to Victim Compensation**

Role of Judiciary is an essentiality for making the reparative justice system of our country a success. The inclusion of provision for victim compensation scheme in Criminal Procedure amendment of 2009 is undoubtedly a turning point in regard to reparative justice system but a check on its effective implementation and judicial interpretation is equally important. Some of the landmark judicial pronouncements in relation to victim compensation are discussed below.

### **Ankush Shiwaji Gaikwad v. The State of Maharashtra (AIR 2013 SC 2454.)**

Hon'ble Court held that compensation to victim(s) of crime or their dependants under S. 357 Cr.pc should be a part in criminal justice system. Court held that it should be the mandatory duty of criminal court to apply its mind to question of awarding compensation in every case. Power is not ancillary to other sentences but in addition. Court must also disclose that it has applied its mind to such question by recording reasons for awarding/refusing grant of compensation. Power given to courts under S. 357 is intended to reassure victim that he/she is not forgotten in criminal justice system. Court further held that the very object of S. 357 would be defeated if courts choose to ignore S. 357 and do not apply their mind to question of compensation.

### **Serina Mondal v. State of W.B.( 2018 SCC Online Cal 4238)**

While deciding the issue of granting compensation to a victim of trafficking, a Single Judge Bench comprising of Rajasekhar Mantha, J., held that right to compensation under Section 357 A of Cr.Pc is a fundamental right of the victim. In this case the victim was identified and brought back to the state. The accused were arrested. Victim's application to District Legal Services Authority was rejected. And appeal to State Legal Services Authority was also not entertained. In this case Hon'ble High Court of West Bengal held that rejection of petition for compensation was violation of victim's fundamental right under Article 21 of the Indian Constitution. Denial of compensation to such victim would continue such violation and perpetrate gross inhumanity on the victim in question. On the basis of discussion and observations as mentioned hereinabove, the Court held that the State Legal Services Authority was not right in rejecting victims claim. The matter was sent back to the State Legal Services Authority for fresh assessment to be completed within ten days.

**Karan v. State of NCT Delhi ,Appeal 352/2020**

Hon'ble Delhi High Court directed for victim compensation by the convicts. In this case a report was filed by amicus curiae G. S. Bajpai, Chairperson, Centre for Criminology and Victimology at the National Law University in Delhi, in association with senior advocate Vikas Pahwa in the Delhi High Court. Based on the report, a tool for the "victim impact report" was formed which would be a requirement for all courts and police stations of Delhi. It was held that the court while deciding the quantum of compensation will consider monetary expenses borne by the victim as such as money spent on counselling or psychological therapy, medical treatment, loss of earning, legal expenses, damage or loss to property, loss due to attachment or collection of property for evidentiary purposes, funeral expenses and interest on the total sum incurred. Court further held that after a crime has been reported, the investigating officer will have to compulsorily record the "loss or injury suffered by the victim" and "financial capacity of the accused." Moreover, a group of legal experts appointed by Delhi State Legal Services Authority (DSLISA), including senior police officers and social activists appointed by the court where a criminal trial is taking place, will assess the "emotional and mental" trauma faced by the victim of any crime and will prescribe monetary compensation before the jail sentence is announced.

**District Collector Alappuzha v. District Legal Service Authority, Alappuzha and other (WP(C). No.7250 of 2014 (E)**

On 22<sup>nd</sup> December, 2020 Kerela High Court passed a landmark judgement stating that Section 357A(1), (4), (5) of Cr.pc. are substantive in nature. The victims of any incident that happened prior to the provisions in force shall be entitled to compensation. The Court, in its Judgment observed that the Criminal jurisprudence, has always been accused centric, however, "with the advent of the philosophy of victim compensation with its avowed purpose not to award damages analogous to those in cases of tortious liability, but to give solace, by way of compensation out of the public purse, for the injury sustained, whether the offender had been brought to trial or not, a new stakeholder, in the criminal law, was ushered in. The Court also noted that the State has a humanitarian responsibility to assist crime victims and also that the assistance is provided because of the social conscience of its citizens and as a symbolic act of compassion. Importantly, the Court held that under Section 357A (4) Cr. pc, a 'victim' is one who suffers any loss or injury by reason of the act or omission of another in which the offender has not been traced or identified and against whom a trial has not taken place as such an interpretation alone would make section 357 A (4) Cr. pc workable and have meaning.

### **Section 357A (4) Cr.pc: Substantive or Procedural provision?**

The Court noted that while substantive law creates, defines or regulate rights, the procedural law creates the method for enforcing or having redressal for the rights so created. It may be noted that the Apex Court in the matter of **Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa and Others v. N.C Budharaj and Others**, [ 2001 2 SCC 721] stated:

“Substantive law is that part of law, which creates, defines and regulates rights in contrast to what is called adjective or remedial law which provide a method of enforcing right”.

In this backdrop, the court said, "A reading of Sections 357A (1)(4) & (5) Cr.pc., will make it explicit that the said sub-clauses create a right upon victim to obtain an award of compensation on satisfying the conditions stipulated therein."

Observing that Section 357A (1)(4) & (5) Cr.pc., creates a right upon a victim in cases where the offender is not traced or identified and the trial has not taken place, to obtain compensation, from the State Government for the rehabilitation of the victim. Thus, Section 357A (1), (4) & (5) Cr.pc., is a substantive law and not a procedural law.

### **An Analysis of the Reparative Justice System In India**

From this study we have found that India's justice delivery system have references of reparation to victims in manusmriti and also in Stone Age. But during the Middle Ages the concept disappeared as the king/rulers were collectors of fine from convicted persons. Later on during the British age the concept redeveloped in India. Indian legislations opted for its inclusion under Constitution of India, Criminal Procedure Code, 1973 and Probation of offenders Act, 1958. But amendment of Criminal Procedure Code in 2009 brought a remarkable development in reparative justice system with the inclusion of victim compensation scheme. Victim Compensation scheme is well implemented in states of India. But still some states have zero number of cases where compensation is granted (refer table no.2 above). One of the reasons may be lack of awareness in public about the scheme. Moreover, reparative justice as a whole also includes other aspects like a victim friendly environment, trauma counselling of victims, victim centric judiciary and other machineries etc. which are not yet covered by Indian legislation. Therefore, we are at a very initial stage as per reparative justice system is concerned.

## **Conclusion**

Restorative justice for accused and reparative justice for victims are signs of a progressive judicial administration. Reparative justice means reparation of loss to the victim/victim's family. As a result of a crime a victim may suffer different types of loss including mental, physical, emotional, economic etc. Progress in our criminal Justice system is a continuing process. From this study we can say that victimology has gained importance after many research, recommendations, judicial pronouncements and legislative amendments. Criminal Procedure amendment of 2009 is a turning point in victimology. Before this amendment, the provisions of compensation to victims were sparingly used and victims remained forgotten party often in criminal cases. The introduction of Victim compensation scheme has become a significant part of criminal justice system. But there is a long way to go. Even after ten years of its introduction in the criminal law, the zero number of application received/ordered in state of Goa and three other union territories is a critical point concerning the implementation of the scheme. If we talk about reparative justice for victims it will cover many other aspects including victim compensation. A victim-friendly police station, a victim-friendly court, sensitized public prosecutor, sensitized medical examiners, safe-secured & adequate number of shelter homes, trauma counselling centres, effective implementation of victim compensation scheme, speedy trials and many other factors together will constitute a proper reparative justice system for victims. Victims easy access to information about judicial procedures is also a significant factor because often it is seen that victims are often left uninformed regarding stages of cases. But India's legislative framework is very limited. Moreover, a smooth system demands strong legislation, awareness and structural changes in the judicial administration. Societal stigmas often faced by victims causes serious psychological loss which needs to be repaired. So, social transformation is another important aspect which also holds utmost importance when we talk about a reparative justice system for victims. Therefore, we have to go a long way in order to establish a truly impressive reparative justice system.

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