

# Justice should not only be done but also seems to be done (Victimization and Administration of Criminal Justice in India)

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**ABSTRACT:** *“Just as medicine treats all patients and all diseases, just as criminology concern itself with all the criminals and all forms of crime, so victimology must concern itself with all the victims and all aspect of victim city in which society takes an interest.”*<sup>1</sup> - **Nelson Mandela**

The criminal justice system throughout the world is in the hands of State and State being at the centre stage. Law and order is the foremost duty of the State. With this primary duty the state fosters peace, prosperity, maintains rule and order and provides access to Justice for all. Every citizen in the modern welfare state is expected to have the basic human rights. Whenever these rights are violated the judicial system provides mechanism for redressal of such violations. Whenever a citizen is harmed, injured, killed as a result of crime, he or she is referred as “victim”. Though there has been inbuilt mechanism to initiate criminal proceedings against the offender of such crime, however such victim may himself seeks justice by setting the criminal justice system in motion either by informing the police about the same or by complaint. Crime affects the individual victims, their families and causes financial losses to the victims. These crimes cause serious and psychological injuries to the families of victim of crime.<sup>2</sup> Such an act needs to be well and properly redressed by the courts by providing the victims easy access to justice. It is only in the past few decades that the impacts of victimization on crime have affected the person and drew their attention towards the present system of criminal justice and asked to be treated with compassion and dignity so that their fundamental rights must be protected and preserved.

**KEYWORDS: CRIME, VICTIM, RIGHTS, CRIMINAL JUSTICE AND VICTIMIZATION**

## I. INTRODUCTION:

*“The criminal law in India is not victim oriented and the suffering of the victim, often immeasurable is entirely overlooked in misplaced sympathy for the criminal. Though our modern criminal law is designed to punish as well as reform the criminals, yet it overlooks the by-product of crime i.e. the victims”*<sup>3</sup>

– **Justice Krishna Iyer**

Crime analysis all around this beautiful earth made by God reflects the fact that there cannot be a society without crime and criminals, violence and tragedy. Crime has been referred as one of the social phenomena which have always been faced by the modern society. No society whether it is primitive or modern, no country whether it is developed or in the developing stage is free from the clutches of Crime. Crime destroys and damages the social fabric.

<sup>1</sup> B. Mendelson, “Victimology and Contemporary Society’s Trends” Victimology 1 (1976), pp. 8-28

<sup>2</sup> Measures for Crime Victims in the Indian Criminal Justice System by Kumaravelu Chockalingam.

<sup>3</sup> V. R. Krishna Iyer: Access to Justice- A case of Basic change (1991) p.14

“The history of the crime and punishment in the whole civilized world reveals a steadily increasing concern with the treatment of criminals and the virtual blackout of victim’s attention towards crime. For more than thousand years, prior to the mid-twentieth century the victim of crime in our society and the administration of Justice has been, ignored.”<sup>4</sup> The victim of crime has been considered has the ‘forgotten man’ of the criminal justice. This lack of knowledge about the victims is shocking; given that the criminal justice system which is prevailing today would collapse if their cooperation was not forthcoming.

***Tears shed for the accused are traditional and ‘trendy’ but has the law none for the victims of crime, the unknown martyr?***<sup>5</sup>

The question and revealing marks by Honourable Justice Krishna Iyer on plight of victims in the criminal Justice system clearly indicates and depicts the lacuna and ignorance of the criminal Justice system towards ‘Victims’. The agencies that are concerned with the administration of Criminal Justice System are the Legislature, Police, Courts and the correctional services. The legislature provides the framework of legislation within which all other agencies operate. The police are concerned with the enforcement of law, the courts with the administration of justice through various procedures and correctional service with the treatment of criminal through several institutional and non institutional programmes. The most important object of the criminal law is the protection of primary personal right to life, personal liberty and the property. In the wider connotations, the protection is ought to be against the unlawful invasion by other- the lawlessness, the violent, the disorderly, predatory and fraudulent practices. But where the guilty man, lodged, fed, clothed, warmed, lighted, entertained at the expenses of the state model cell, issued from it with sum of money lawfully earned, has paid debt to the society. He can set the victim at his defiance but the victim has his consolation. He can think that by taxes he pays to the state treasury, he has contributed towards parental care, which has guarded the criminal during his stay in the prison.<sup>6</sup>

## **II. ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM IN INDIA**

***“Indeed, history is nothing more than a tableau of Crimes and misfortunes” – Voltaire***

The concept of Criminal Justice System came into India with the advent of Manu. He had described many offences and believed in the “divine theory” which means that King is the Supreme and people are bound to follow his rules and regulations. With the change in the thought process of the society people started denying the King’s rule and started making their own law as per their convenience. The new rule that is “Might is Right” started being followed in the absence of the codified law and people started demanding “eye for eye justice”. It was in this tough time only that the theories like Divine theory, Social Contract

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<sup>4</sup> Michael Fooner, an eminent criminologist in his article, "Victim Induced Criminality" published in "Science" Vol. 153 (1966).

<sup>5</sup> Justice Krishna Iyer, Hon'ble Judge, Supreme Court of India in his writing "The Criminal Process and Legal Aid", Published in Indian Journal of Criminality. P.10

<sup>6</sup> Adolphe Prins: Belgian Criminologist wrote about the inequitable treatment accorded to the offender and victim.

theory and theory of Natural Justice came into existence. In modern times we have the codified laws. The essential objects of these laws are to protect society from unwanted criminal objects and create threat of punishments to the prospective law breakers. In India the administration of Criminal Justice is divided into two parts-

1. Substantive Law
2. Procedural Law

Substantive Criminal law defines the offences and punishments for the offences while procedural administered the substantive law and provide the procedure which leads to Justice in reality.

### III. ANCIENT CRIMINAL JUSTICE SYSTEM

*"Mankind censure injustice fearing that they may be the victims of it, and not because they shrink from committing it"*

- PLATO

The concept of natural justice also prevailed in the ancient era when there were no codified laws. In ancient civilization, the victim of the offence has been referred as central figure in the criminal settings. In primitive societies there was as such no regulated system of criminal justice. In the ancient societies, redressal for the personal wrong was in the hands of the individual. The victim of the crime was having the right to take law into his hands and punish the aggressor in accordance with prevailing practices accepted by his society. He carried out the punishment in the form of revenge aimed at deterrence and compensation. It was a private revenge and compensation was exclusively personal.<sup>7</sup> The basis of primitive law was the reparation by the offender of the offender's family to the victim for his loss and injury. At the same time there was complete absence of political institution to enforce those laws and punish the criminals, so the right to punish was vested with the victim or victim's kin. The victim's family was allowed to punish a criminal or they can directly receive money as compensation for crime. In primitive cultures, prisons did not exist, therefore the choice of punishing a serious offenders were the death penalty, exile or fine. Criminals were harshly punished and the theory of eye for an eye was used to punish the criminals.<sup>8</sup> The first and foremost duty of the king was to protect his subject from the bites of stolen thorns and treat them deservingly. Restoration of the stolen property, investigation of crime of victim compensation from the royal court was included under law enforcement of the programme. A detailed description about the criminal justice system in ancient India

<sup>7</sup> Sir Henry S Maine: Ancient Law, Oxford Library Press (1946): The Penal law of ancient communities is not the law of crimes; it is the law of wrongs or in English technical term, Torts.

<sup>8</sup> An example: If a debtor failed to fulfill an obligation, his creditor could haul him into a public square and proclaim the particulars of the bad debt. He could then bring the debtor before a magistrate who confined him for sixty days while the creditor continued to announce the debtor's bad faith. If the debtor, or his family and friends, had not discharged the obligation after sixty days, the creditor had the right either to kill him or to sell him as a slave and keep the proceeds. Usually the debtor was allowed to work off his obligation.

was given by Manu, Kautilya and Yajnavalka.<sup>9</sup> According to Manu, “If a judge or his clerk fails to perform their duties or divulge sub- judice court matters to public will receive punishment. According to Madhatithi and Brashaspati, and Sukraniti, king was the sole authority in executing both the punishment and pardon, nor the court and judge.

In early civilization, the responsibility of protecting oneself against crime and punishing the offenders rested with individuals, which reflected the idea of “retributive justice”. As the society got organised in the form of states, the responsibility of protecting the members against the criminals and punishing the violators of criminal code shifted to the political authority. The remedies however continued to be based by and large on the retributive justice, which provide compensation, by the wrong doers to the victims or his family members. Therefore during the 19<sup>th</sup> century, most legislative activity has occurred in the states, providing victim services, changing the criminal process, emphasizing special groups, establishing victim rights and dealing more harshly with offenders. They were having greater say in trial formulating sentence. They enjoyed numerous protection and rights till emergence of states as welfare states where in victim slowly eloped from the criminal justice system.

#### **IV. MODERN CRIMINAL JUSTICE SYSTEM**

The victim of crime after occupying a position of almost complete obscurity for centuries has now emerged and been accepted as a person worthy of attention in nation’s across the world. The interest in the victims of crime has been quite rapid in the 19<sup>th</sup> century during which many international symposia were held to focus the attention of the victims of crime. Justice Benjamin N. Cardoza of the Supreme Court of the United States says that “Justice though due to accused, is due to accuser also.<sup>10</sup> The concept of fairness must not be strained till it is narrowed to a filament. In a seminar on criminal law, Lord Denning said “So far as concern compensation for victims of crime, we have a system whereby the victims of violent crime. Such as murder, are paid, ex-gratia sums of the state... this is not the statutory scheme but really unique and working well there.” United Nations Organisation has also initiated movement in which way the situations of crime victims might be improved. The seventh United Nation Conference on the Prevention of Crime and Treatment of Offences took place in Milan during August- September 1985 recommended to United Nations General Assembly, for the rectification of “Basic Principles of Justice for Victims of Crime and Abuse of Power”. This declaration, concerning victims of crime, establishes standard for access to Justice and fair treatment, restitution from the offender, compensation, compensation from the state and assistance towards recovery. The declaration calls upon state to take necessary steps to give effect to the provisions in the

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<sup>9</sup> Manusmriti : IX 272

<sup>10</sup> The Statement of the Chairman, US President's Task Force on actions of Crime Final Report (1982) Quoted in Snyder Vs Massachusetts (1934)

declaration and to curtail victimization.<sup>11</sup> The declaration also specifies certain ways in which victims should have access to judicial and administrative procedures and how they should be treated fairly. The declaration says that the victim should be treated with compassion and respect for their dignity and entitled to prompt redress. The victims should be informed about their rights in seeking redress through formal and informal procedures the expeditious, fair, inexpensive and accessible.<sup>12</sup> The responsiveness of judicial and administrative processes should be geared to serve the needs of the victim. The victims should be informed about their roles and scope, timings and progress of the proceeding and disposition of the case. Offenders and third parties responsible for the crime should make fair restitution to victims, their families and dependents. Such restitution should include the payment of harm or loss suffered or reimbursement of expenses incurred as a result of victimization. Also the government should help to adopt practices and regulations to consider restitution as an available sentencing option in criminal cases.<sup>13</sup>

### Who is “Victim”?

*"Much about the moral fibre of a society can be learned from the way it deals with crime. It is not enough to treat criminals with as much compassion as we can, especially when this liberal spirit is carried to the excess of interfering with crime prevention as the courts have done. It is about time society showed a little moral strength by acknowledging that victims, real people, are hurt by crime and that it is to them that criminals owe their debt."*

The world is full of crime and criminals, tragedy and violence. Crime is a social phenomenon. No society primitive or modern, no country whether developed or underdeveloped is free from the clutches of crime. The existence of crime and violence in every society is inevitable and is old as humanity itself. The by product of the crime i.e. victim is equally bound to emerge. The focus has mainly and always been on criminal and crime, none on the victims of crime. *"So the forgotten man in the legal world and society happens to the victims for those who plight remedy we have the whole system."*

The term victim in simple terms may refer to all those who experiences injury, loss and hardships and such as been caused due “Crime”. United Nation General Assembly<sup>14</sup> defined “Victim” as *a “person who, individually or collectively, has suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violations of criminal laws operative within member states, including those laws proscribing criminal abuse of power”.*

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<sup>11</sup> Para 4 of the Preamble of UNO.

<sup>12</sup> Para A-5 of Declaration for Basic Principle for Victims of Crime and Abuse of Power

<sup>13</sup> Extract from Declaration for Basic Principle for Victims of Crime and Abuse of Power.

<sup>14</sup> Articles 1 and 2, United Nations General Assembly Declaration of Basic Principles of Justice for Victim and abuse of Power adopted in November 1985.

Section 2(wa) of the Code of Criminal Procedure<sup>15</sup> defines 'victim' as '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.

Thus victimization is the result of the ponder move made by the man or an organisation to abuse, mistreat, hurt or to pulverise another property or belongings. The Latin word "Victima" signifies "Sacrificial Creature". Therefore "Victimology" may be defined as the scientific study of victimization, including relationships between the victims and offenders, the interaction between the Criminal Justice System and Victims.

### **\*Juvenile Victims**

Juvenile Victimization is the concept that has become more debatable. A Child below eighteen years of age suffers from crime like Molestation, physical and mental abuse, sexual harassment and other heinous crimes which affect the whole life of Victim. The national crime Victimization survey reported that the average annual rate of violent crime continues to the highest among youth between the ages of 16 to 19 years who were victimized at a rate of 55.6 per 1000 persons<sup>16</sup>. In order to protect children from the victimization the only tool is "Education". The Supreme Court made Article 21- A to make education fundamental right of children.<sup>17</sup>

### **\*Victimization of women**

During the past few decades, victimization of women has increased drastically and the reason behind such is the low mentality of people and lack of education. Victimization of women includes sexual harassment, physical abuse, torture, killing them for dowry and domestic violence. According to National Centre for Injury Prevention and Control, women experiences about 4.8 million intimate partner related assaults and rape every year.<sup>18</sup>

### **\*Victimization of Disabled Person**

Disable person are more victimize than the normal person because of their disabilities. People always take advantage of their disability and take full advantage to fulfil their self motive of crime. Disability includes the Cognitive disabilities, sensory disabilities and psychiatric disabilities. According to National Crime Victimization Survey 2017 for both male and female rate of violent crime was greater for those with disabilities than the rate for those without disabilities. The rate for males with disabilities was 59 per 1000 compared to 25.1 per 1000 for males without disabilities while the rat was 61.8 per 1000 for females without disabilities

<sup>15</sup> Added by The Code of Criminal Procedure (Amendment) Act, 2008

<sup>16</sup> www.ncjrs.gov

<sup>17</sup> Unni Krishnan, J.P. And Etc. vs. State of Andhra Pradesh And Ors. AIR 1993 SCR(1)594

<sup>18</sup> The National Commission for Women (NCW) 2017.

### \*Restitution to the victims

Despite the absence of any special legislation to render Justice to the victims in India, the Supreme Court has taken in affirmative action in adopting the concept of restorative Justice and awarding compensation to the victims of crime.<sup>19</sup>

## V. VICTIMS IN CRIMINAL JUSTICE SYSTEM- COMPENSATORY JURISPRUDENCE FOR VICTIMS

*"So slow is justice in its way. Beset by more than customary clog. Going to law in these expensive days, is much the same as going to dogs"*<sup>20</sup>

- Willock

Unlike the accused, victims have virtually no rights in criminal proceedings. Victims are left to either suffer injustice silently or seek personal retribution by taking law into their hands. Justice Krishna Iyer makes it clear that criminal law in India is not victim oriented rather it is offender oriented and suffering of victims often immeasurable, are entirely overlooked in misplaced sympathy for the criminal. Denial of any role of the victim is not only denial of justice to the victims but also would tantamount to negate the Rule of law, the fundamental of democracy and constitutionalism. In India the accused has been treated as a privileged person. He gets all possible help from all corners of the country. Not only he gets defence counsel at the costs of the state at the time of the trial but he is also benefited after conviction. The aftercare reformative and rehabilitative programs for the accused are also at the rise. The punishment can be considered more as treatment, rehabilitation and re socialisation through probation, parole and after care community services. The modern criminal law overlooks the by product of the victims of crime. The lack of victim oriented jurisprudence is the main cause of deterioration of the conditions of the victim and their family members. The victim sets the criminal into motion but then goes into oblivion.

The adoption by the General Assembly of the United Nations at its 96<sup>th</sup> Plenary on November, 29/ 1985 recognised the four major components of the rights of victims of crime- Access to Justice and fair Treatment<sup>21</sup>, Restitution, Compensation and Assistance. The Indian Legal Framework regarding Compensatory Jurisprudence is read under two heads-

<sup>19</sup> (Sukhdev Singh vs. State of Punjab (1982 SCC (Cr) 467) Balraj vs. State of U.P. (1994 SCC (Cr) 823), Giani Ram vs. State of Haryana (AIR 1995 SC 2452) Baldev Singh vs. State of Punjab (AIR 1996 SC 372)

<sup>20</sup> The Victim in Criminal Justice System' by Mahmood Bin Muhammad in 'Perspective of Criminology

<sup>21</sup> Clauses 4 and 5 of the U.N. Declaration read thus:

*"4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.*

*5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to*

1. Judicial Response
2. Under the Constitutional Scheme

The legal Framework regarding the compensation to victims of crime can be traced in three major legislations namely as-

**\*Section 357<sup>22</sup>** states that if an offender is given a sentence of which fine forms a part, then a certain sum of such fine may be applied in restoring any loss of property that the victim have suffered.

**\*Section 357-A<sup>23</sup>**

1. Every State Government in Co-ordination with the Central Government shall prepare a scheme for proving funds for the purpose of compensation to the victim or his dependents that have suffered loss or injury as a result of the crime and require rehabilitation.
2. Recent Changes include: Victim can engage Advocate to support and assist the prosecution.
3. Statement of the victim to be done in a safe place or a place of her choice and by a women policy officer.
4. Use of Audio Video for Recording Statements.
5. .Use of Audio Video Electronic means for confession/statement.
6. Witness can be done by using Electronic Means.
7. In Camera Trials and Identity Protection.
8. Victim compensation.<sup>24</sup>
9. Right to appeal for the victim against the verdict of the Trial Court.<sup>25</sup>

**\*Section 5(1)<sup>26</sup>** states that 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 of injury caused to any person by the commission of the offence;
- (b) Such costs of the proceedings as the court think reasonable.

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*obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms."*

<sup>22</sup> Criminal Procedure Code, 1973

<sup>23</sup> Added by The Code of Criminal Procedure (Amendment) Act 2008 (5 of 2009)

<sup>24</sup> Sakshi v. Union of India, AIR 2004 SC 3566

<sup>25</sup> Sarwan Singh Vs State of Punjab SCC 111 (1978 )

<sup>26</sup> Probation of Offenders Act, 1958

## VI. CONSTITUTIONAL LAW OF INDIA AND VICTIMS OF CRIME

The Indian Constitution has several provisions which endorse the principle of victim compensation. The constellation of these clauses had laid down the foundation of new order in which Justice-Social, Economical and Political would flower in the national life of the country (Article 38). Similarly Article 41, which has relevance to Victimology mandates that the State shall make an effective provision for securing public assistance in case of disablement. Article 51-A makes it a fundamental duty of every citizen of India *to protect and improve the natural environment... and to have compassion for living creatures and to develop humanism*. If empathetically interpreted and imaginatively expanded, one can find here the constitutional beginnings of victimology in the opinion of Krishna Iyer.<sup>27</sup> Article 21 provides protection of personal liberty and life and obligates the State to compensate victims of criminal violence.<sup>28</sup> While every accused has a right to have fair trial, and those who are convicted are to be served justice not merely by punishing them, but by sending them to correctional homes where different kinds of psychological and vocational training is imparted to them. The issue of victim's rights seems to have been consigned to the backburner and forgotten. It is in this context that everybody has to realize that statutory provisions in Indian criminal law in favour of victims are very few, but judiciary has helped in extending the scope of the existing provisions to the victims. Although the judiciary is actively engaged in finding the redress for the victims the ultimate goal is to pass powerful, creative and efficient legislation in order to strengthen the hands of the Judiciary.

The principle of payment of compensation to the victim of crime was evolved by the Supreme Court on the ground that it is the duty of the welfare state to protect the fundamental rights of the citizens not only against the actions of its agencies but also responsible for hardships to the victims on the ground of humanitarianism and obligations of social welfare, duty to protect its subjects, equitable justice etc.

## VII. JUDICIAL PRECEDENTS

In *Rudal Sah v. State of Bihar*<sup>29</sup> the Supreme Court for the first time made it categorically clear that the higher judiciary has the power to award compensation for violation of fundamental rights through the exercise of writ jurisdiction and evolved the principle of compensatory justice in the annals of human rights jurisprudence. This is the most celebrated case where the Supreme Court directed the State of Bihar to pay compensation of Rs.35, 000/- to Rudal Sah who was kept in jail for 14 years even after his acquittal on the ground of insanity and held that it is a violation of Article 21 by the State.

<sup>27</sup> V.R.Krishna Iyer, *A Burgeoning Global Jurisprudence of Victimology and some compassionate Dimensions of India Justice to victims of crime*, 1999.

<sup>28</sup> D.D.Basu, *Constitutional Law of India*, Nagpur, Wadhwa & Co., 2003.

<sup>29</sup> AIR 1983 SC 1086

In the land mark case of *Sarwan Singh v. State of Punjab*<sup>30</sup>, the Supreme Court held that in awarding compensation, the court has to take into consideration various factors such as capacity of the accused to pay, the nature of the crime, the nature of the injury suffered and other relevant factors. The court observed: “power to award compensation to victims should be liberally exercised by courts to meet the ends of justice... in addition to conviction. The court may order accused to pay some amount by way of compensation to the victim who has suffered by action of accused. It is not alternative to but in addition thereto. The payment of compensation must be reasonable. If there are more than one accused, quantum may be divided equally unless their capacity to pay varies considerably. Reasonable period for payment of compensation if necessary by, installment may be given”.

In *Sebastain v. Union of India*<sup>31</sup>, two women filed a writ of habeas corpus to produce their husbands, who were found missing. The authorities failed to produce them. The court concluded, on the basis of material placed before it, that the two persons “must have met unnatural deaths and that *prima facie* they would be offences of murder”. On account of failure of Government, the Supreme Court directed the respondents to pay Rs.1 lakh to be given to each of the wives of the missing persons.

The decisions in *Nilabati Behera v. State of Orissa*<sup>32</sup> and in *Chariman, Railway Board v. Chandrima Das*<sup>33</sup> are illustrative of the new trend of using Constitutional jurisdiction to do justice to the victims of crime. Substantial monetary compensations have been awarded against the instrumentalities of the State for the failure to protect the rights of the victims.

The fallout from the path-breaking *Vishaka judgment (Vishaka v. State of Rajasthan)*<sup>34</sup> helps to illustrate the situation of female victims. After police and medical personal prevented a social worker who was gang raped by upper caste individuals in a village in Rajasthan from registering her case and providing evidence, 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 outline guidelines to prevent and redress complaints of such crimes.

In *Bhim Singh v. State of Jammu and Kashmir*<sup>35</sup>, 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 Court held, when a person comes to the court with the complaint that he has been arrested and imprisoned with mischievous and malicious intent and that his

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<sup>30</sup> AIR 1978 SC 1575

<sup>31</sup> AIR 1984 SC 1826

<sup>32</sup> 1993 2 SCC 746

<sup>33</sup> 2000 CrLJ 1473 SC

<sup>34</sup> AIR 1997 SC. 3011

<sup>35</sup> (1985) 4 SCC 677

constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases the Court has the jurisdiction to compensate the victim by awarding suitable monetary compensation. While considering this as an appropriate case, the Supreme Court awarded a sum of Rs. 50,000/- as compensation and ordered the same to be paid within two months.

In *D.K.Basu v. State of West Bengal*<sup>36</sup>, the Supreme Court observed: “It is now a well accepted proposition in most of the jurisdiction, that the monetary and pecuniary compensation in an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for the redressal of the established infringement of the Fundamental Right to life a citizen by the public servants. The State is vicariously liable to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified from the wrongdoer”.

In *Sarwan Singh v. State of Punjab*<sup>37</sup>, the Supreme Court reiterated its previous standpoint and also laid down points to be taken into account while imposing fine or compensation: it is necessary for the court to decide whether the case is fit enough to award compensation, if found fit enough, the capacity of the accused to pay the fixed amount, the nature of the crime, the injury suffered, the justness for the claim of compensation and other relevant circumstances are to be taken into account in fixing the amount of fine or compensation. After consideration of all facts, the Court felt that in addition to the sentence of 5 years rigorous imprisonment, a fine of Rs.3, 500/- on each of the accused under section 304 (1), IPC should be imposed.

In *Rachpal Singh v. State of Punjab*<sup>38</sup>, the High Court concurred with the findings of the sessions court on the conviction imposed but held the imposition of capital punishment was uncalled for as the case was not one of the rarest of rare case and hence their sentence was reduced to imprisonment of life. With regard to the other three accused, they were acquitted under section 302 read with 148 IPC. However, the conviction under section 449 IPC was maintained but the period of sentence was reduced to the period undergone. Considering the revision petition, the High Court held that it was a fit case for exercising the jurisdiction under Section 357 Cr PC and directed each of the appellant to pay a sum of Rs.2,00,000/- totalling Rs. 4,00,000/- and in default, was to undergo a sentence of 5 years rigorous imprisonment. Against this order the appellants filed an appeal before the apex Court.

## VIII. VICTIMS OF BHOPAL GAS TRAGEDY; HUMAN RIGHTS IGNOMITY

The failures of the formal legal system in India, in the context of *mass disasters and mass violation*, are best

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<sup>36</sup> AIR 1997 SC 610

<sup>37</sup> AIR 1978 SC 1525

<sup>38</sup> 2002 Cr LJ 3540 SC

exemplified by the Bhopal disaster caused by MIC gas leak from the factory of Union Carbide India Limited (now Eveready Industries India Limited) on the night of December 23, 1984.

The Supreme Court of India in 1989 approved the settlement of Union Carbide Corporation, New York (UCC) to secure immediate relief to the Bhopal Gas Victims on both judicial and humanitarian grounds, in spite of the inability of the Indian legal system to provide meaningful and effective redress. The extraordinary process of law following the Bhopal gas leak disaster shows that compensation is the only thing to be done when the point of no return has been reached. The need arises for setting up of an *International Criminal Court* (ICC) for the protection of victims and witness in the trial of mass crimes. The Bhopal disaster continues to be a grim reminder of the inability of the legal system to cope with the challenges posed by such *mass disasters* and *mass torts* which remains as an *unfinished agenda*. The majority of crime victims in India suffer without any redress. Victim assistance is a rarity in India. Under Criminal law, victims receive compensation only in a limited way when the offender is convicted and sentenced. The victim support movement in India needs a policy of *restorative justice* that aims to serve both the victim and the offender with comprehensive services.

Until 1970s the victims of crime were forgotten entity in the criminal justice system. The attitude began to change as the discipline of victimology came into its own. But in India the victims of crime play only as insignificant role in the criminal justice process. Many countries have now recognized the need to provide services to help them recover from the effects of crime and assist them in their dealings with the criminal justice position of victims in the criminal justice system. Like in the United States, Canada, Europe and other developed countries, both the Government of India and the State Government should enact exclusive legislations for victims of crime, as the existing provisions in the criminal laws are not sufficient. *Criminal justice, D.P.Wadhwa, J.*,<sup>39</sup> of the Supreme Court of India stressed, "***Would look hallow if justice is not done to the victim of the crime***". Neglect of granting compensation to the victim would result in the negation of the *Rule of Law*.

## IX. CONCLUSION

***"Too much mercy often resulted in further crimes which were fatal to innocent victims who need not have been victims if justice had been put first and mercy second."*** -*Dame Agatha Christie*

The Victim of crime is still a "Forgotten man" in the criminal Justice System. A Paradigm shift in the Justice System is the need of the hour. There should be change in the thought and focus from criminal Justice to Victim Justice, but Victim Justice shall be perceived as complementary and non contradiction to criminal justice.

**"Justice should not only be done, but also seems to be done"**

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<sup>39</sup> <https://ehjournal.biomedcentral.com/articles/10.1186/1476-069X-4-6> accessed on dated 5th July 2018 at 10:45 AM