CHAPTER 1
INTRODUCTION

Victim’s compensation has always been the weeping beggar at the door of criminal justice. Although, it is an age old concept but its development on more scientific lines and also as branch of criminology has begun since a few decades ago. Several countries have taken up the different schemes of payment of compensation to their victims of crime. These are taken through different legislative measures. In India as well there are different statutory provisions in criminal justice under which the compensation can be awarded to the victim of crime, viz. Fatal Accident Act, 1855, Probation of Offenders Act, 1958 and Code of Criminal Procedure, 1973.

In pursuance of the recommendations of Law Commission of India in its report a comprehensive provision for compensation to victims of crime has been inserted in section 357 of the Code of Criminal Procedure, 1973 (herein after Cr. P.C.). According to s. 357 sub-s. (1) and sub-s. (3), the court may award compensation to the victim of crime at the time of passing judgment, if it considers appropriate in a particular case in the interest of justice. These provisions make the trial courts and the appellate courts competent to award compensation to the victims of crime only after trial and conviction of the accused. These powers to award compensation are not subsidiary to other sentence, but it is in addition there to. It is left to discretion of the court to decide in each case depending on its facts and circumstances. However, the existing provisions of Code are not found encouraging one. Any compensation awarded under the cover of this Section at the end of normally protracted trial spanning over an average of 8 to10 years is not immediately available to the victim as he must await the appellate round to conclude.

It is pertinent to note that the trial courts have seldom used the powers conferred on them under s. 357, Cr. P.C., liberally. The provision for payment of compensation has been in existence for a considerable period of time on the statute book in this country. Even so, criminal courts have not, it appears, taken significant note of the said provision or exercised the power vested in them thereunder. The Law Commission refers to this regrettable omission in the following words:

1 41st Report, Law Commission of India on Indian Penal Code, 1860 (1969)
“We have a fairly comprehensive provision for payment of compensation to the injured party under section 545 of the Criminal Procedure Code. It is regrettable that our courts do not exercise their statutory powers under this section as freely as liberally as could be desired. The section has, no doubt, its limitations. Its application depends, in the first instance, on whether the court considers a substantial fine as proper punishment for the offence. In the most serious cases, the court may think that a heavy fine in addition to imprisonment for a long term is not justifiable, especially when the public prosecutor ignores the plight of victim of the offence and does not press for compensation on his behalf.”

More than three decades back Krishna Iyer J. speaking for the Court in *Maru Ram & Ors. v. Union of India and Ors.*, in his inimitable style said that while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty. Victimology must find fulfilment said the Court, not through barbarity but by compulsory recoupment by the wrong doer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn. The number of cases where s.357 has been used for awarding compensation is like salt in the flour. Courts never took it seriously. So taking note of the indifferent attitude of subordinate courts, the Apex Court in the *Hari Kishan case*, directed the attention of all courts to exercise the provisions under s.357 of the Cr. P.C. liberally and to award adequate compensation to the victim, particularly when an accused is release on admonition, probation or when the parties enter into compromise. The court highlighted the importance of s. 357(3) of the Cr. P.C. in the following words:

“Section 357 of Cr. P.C. is an important provision but courts have seldom invoked it. Perhaps due to ignorance of the object of it, this Section of law empowers the court to award compensation while passing judgment of convicting. In addition to conviction, the court may order the accused to pay some amount by way of compensation to the victim, who has suffered by the action of the accused. This power to award compensation is not ancillary do other sentences but it is in addition thereto. It is a measure of responding appropriately to

---

crime as well as reconcealing the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system.\textsuperscript{8}

While taking cognizance of several cases related to compensation the honourable Supreme Court observed in \textit{Ankush Shivaji Gaikwad v. State of Maharashtra},\textsuperscript{9} that the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation.

In 2008, Cr. P.C. was amended and s. 357 A\textsuperscript{10} was added in which victim compensation scheme had been introduced. Still, there are number of judgements\textsuperscript{11} in which courts are giving no reasons for not awarding compensation and they are passing non speaking orders. Once again in 2013, new additions namely s.357 B, s.357 C have been inserted in Cr. P.C.\textsuperscript{12} S.357 B provides the additional compensation to victims who come under s. 326 A, 376 D of the Indian Penal Code. S. 357 C gives the directions to all the hospitals whether they run by govt. or by local authorities that they provide the free medical aid to the victims of ss. 326 A, 376 A, 376 B, 376 C, 376 D of Indian Penal Code.

Besides that, compensatory jurisprudence has also emerged in the light of human rights philosophy as a dynamic interpretation of Art. 21 of the Constitution. “There are a large number of reported judgements of Supreme Court as well as High Courts which deal with the problem of compensation under Arts. 32 and 226, for breach of public law duties, negligent acts of officers of state, illegal detention, custodial death, rape, torture etc. and creating a new right by way of interpretation of the constitution in human rights approach. The courts have adopted these new measures for making the human rights as well as constitutional rights meaningful, effective and have emerged as the champion of the weak, poor and underprivileged people. The power of the constitutional courts is not only injunctive in ambit, but it is also remedial in scope. Our judiciary is not legging behind in exercising extraordinary constitutional jurisdiction and open a new humanistic compensatory

\textsuperscript{8} Id at 2137
\textsuperscript{9} Supra note 5
\textsuperscript{10} The Criminal Amendment Act, 2008
\textsuperscript{12} The Criminal Law (Amendment) Bill, 2013
jurisprudence by awarding payment of compensation in appropriate cases not in all cases.”

In Rabindra Nath Ghosal v. University of Calcutta and Ors, this Court held:

“The Courts having the obligation to satisfy the social aspiration of the citizens have to apply the tool and grant compensation as damages in a public law proceeding. Consequently when the Court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights and grants compensation, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. But it would not be correct to assume that every minor infraction of public duty be every public officer would be commend the Court to grant compensation in a petition under Arts. 226 and 32 by applying the principle of public law proceeding. The Court in exercise of extraordinary power under Arts. 226 and 32 of the Constitution, therefore, would not award damages against public authorities merely because they have made some order which turns out to be ultra vires, or there has been some inaction in the performance of the duties unless there is malice or conscious abuse. Before exemplary damages can be awarded it must be shown that some fundamental right under Art. 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act”

**Compensation : Meaning and definition**

*Ubi jus, ibi remedium* is the basic principle in the tort that states that there is no wrong without a remedy and the rule of law requires that wrongs should not remain unredressed. The compensation constitutes an important remedial measure in tort law and the principles relating to the determination of damages and compensation in tort are well established. There are several dimensions to the issue of payment of damages and compensation in the law relating to torts includes the measure of damages, quantum of damages, assessment of damages, intention of the wrongdoer, proximity of the cause etc.

Under the Tort law, in order to claim compensation the tort must be of such a nature as will entitle the plaintiff to recover damages. Where, therefore, the case is of a nature which:

---

14 AIR 2002 SC 3560
15 Supra note 3 at 9
16 Ibid
(a) does not give rise to a right to the plaintiff to recover damages, or to the existence of the liability of the defendant, as where the defendant has committed no wrong, whether a breach of contract or a tort, or

(b) does not occasion any loss or damage, or no cause of action accrues to the plaintiff, as when he himself is at fault or the damages are too remote, or he has failed to mitigate his damages.

Compensation cannot be granted:

Thus, the plaintiff cannot recover that part of the loss\(^\text{17}\)

(a) which is due to his own contributory negligence; or

(b) of which the defendant’s conduct is not the cause; or

(c) which is not within the scope of the protection of the particular contract or tort; or

(d) which he should have avoided or mitigated; or

(e) which is too uncertain; or

(f) which is past or prospective, that is, is too remote.

However, the term “Compensation” in present context means amends for the loss sustained. Compensation is anything given to make things equivalent, a thing given to make amends for loss, recompense, remuneration or pay.\(^\text{18}\) It is a sign of responsibility of the society which is civil in nature representing a non-criminal purpose and end.\(^\text{19}\) Compensation, as distinct from damages\(^\text{20}\) is used in relation to a wrongful act, which cause the injury.\(^\text{21}\) Literally, compensation means the money which is given to compensate for loss or injury, whole purpose of compensation is to make good the losses sustained by the victim of crime or by the legal representative of the deceased or who has suffered of pecuniary loss or non-pecuniary loss. Compensation to the victims of crime means something given in recompense i.e. equivalent rendered. It is to be note that the whole purpose of compensation is to make good the loss sustained by the victim or legal representative of the deceased. Generally the term compensation limits itself to monetary compensation which is calculated on the basis of two head i.e. pecuniary loss and non-pecuniary loss.\(^\text{22}\)

\[^{17}\text{Id at 10}\]
\[^{18}\text{State of Gujarat v. Shantilal, AIR 1969 SC 634 at 644.}\]
\[^{19}\text{Devasia, V.V. and Devasia, L. Criminology, Victimology and Corrections 97, Ashish Publishing House (1992)}\]
\[^{20}\text{General Manager, Kerala State Road Transport v. Saradhamma, 1987ACCJ 926 Kerala}\]
According to Oxford dictionary, \textsuperscript{23} “Compensation means to provide something good to balance or reduce the bad effect of damage, loss, injury etc”. According to Black’s Law Dictionary, \textsuperscript{24} “Compensation means 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 make the other whole.”

In criminal-victim relationships, compensation concerns in making amends to him; or, perhaps, it is simply compensation for the damage or injury caused by a crime against him. \textsuperscript{25} As commonly understood it carries with it the idea of making whole, or giving an equivalent, to one party and has no relation to any advantage to the other. \textsuperscript{26} It is counter-balancing of the victim’s sufferings and loss that result from victimization. It is a sign of responsibility a non-criminal purpose and end. \textsuperscript{27}

In the words of the Hon’ble Orissa High Court in \textit{Saraswate Parabhai v. Grid Corp. of Orissa}, \textsuperscript{28} “It is true that perfect compensation is hardly possible and money cannot renew a physique frame that has been battered and shattered, as state by Lord Morris in \textit{West v. Shephard} \textsuperscript{29}. Justice requires that it should be equal in value, although not alike in kind. Object of providing compensation is to place claimant as far as possible in the same position financially, as he was before accident. Broadly speaking in the case of death basis of compensation is loss of pecuniary benefits to the dependants of the deceased which includes pecuniary loss, expenses, etc. and loss to estate. Object is to mitigate hardship that has been caused to the legal Compensation awarded should not be inadequate and should neither be unreasonable, excessive, or deficient. There can be no exact uniform rule for measuring value of human life and measure of damages cannot be arrived at by precise mathematical calculation but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor it should be a source of profit of the person in whose favour it is awarded.”

\textsuperscript{23} Oxford Advanced Learner’s Dictionary, Oxford University Press, 5th Ed. (1996)
\textsuperscript{25} Schafer, S. \textit{Introduction to Criminology} 162, Reston Publishing Company Inc. (1976)
\textsuperscript{26} Supra note 3 at 2
\textsuperscript{27} Supra note 19 at 98
\textsuperscript{28} AIR 2000 Ori 13
\textsuperscript{29} (1964) AC 326
In Shantilal case\textsuperscript{30} and Smt. P. Ramadevi v. C.B. Saikrishna,\textsuperscript{31} Supreme Court of India held that the compensation is anything given to make things equivalent, a thing given to make amends for loss, recompense, remuneration or pay. Therefore compensation means an act of the court which orders a certain sum of money which a court orders to be paid, by a person whose acts or omissions has caused loss or injury to another in order that there by the person demnified may receive equal value for his loss or be made whole in respect of his injury.

Article 9 (5) of the International Covenant on Civil and Political Rights, 1966 states “any one who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation”. The content of this Article 9 (5) is that the victim will have an enforceable right to compensation.

In Baker v. Willoughby,\textsuperscript{32} it has been considered that “A man is not compensated for the physical injury, he is compensated for the loss, which he suffers as a result of that injury. Inabilities, which leads full life, and inability to enjoy those amenities, which depends on freedom of movement and inability to earn as much as is used to earn or could have earned. In State of M.P. v. Pehlajraj Dwarkadas,\textsuperscript{33} the court observed that the term “compensation” has to be read as a synonym for “damages”, the word ‘compensation’ is only a recompense for the pecuniary loss suffered by the victims and, the words ‘compensation’ and ‘damages’, in this context have been known and used as synonymous in the law of tort. In England observations have been made under which it seems that perhaps, there would be a distinction between words “compensation” and ‘damages’ though in England, these words have often been treated as synonymous terms. But in India, Legislature has deliberately not used the English term of ‘damages’ rather has used the word “compensation”.

However, the word reparation, restitution and damages have been used in relation to compensation in judiciary. Reparation refers to the action of compensating the wrong doing and damages done. The term restitution means the responsibility borne by the offender towards the victim by restoring his/her position and rights that are damaged or destroyed. The word ‘damages’ is often used for recovering the pecuniary recompense awarded in reparation for loss or injury caused by a wrongful act or omission or used for the pecuniary reparation

\textsuperscript{31} AIR 1994 Kant 8 (12)
\textsuperscript{32} (1969) 3 All ER 1528.
\textsuperscript{33} AIR 1976 MP 208
due to loss or injury sustained by one person through the fault, negligence of another. In operation of case, namely, **Klaus Mittelbachert v. East India Hotels Ltd.**

“A man has a legal right in his own life. As he has a legal interest entitling him to make a complaint if the integrity of his life is impaired by tortious acts not only in regard to pain, suffering and disability, but also in regard to continuance of life for its normal expectancy. A man has properly a legal right that his life should not be shortened by tortious act of another. His normal expectancy of life is a thing of temporal value, so that its impairment is something for which damages should be given to that.”

**In Halbutt's Plasticine Ltd. v. Wayne Tank and Pump Co. Ltd.:**

“Each and every case depends on its own facts. It being remembered, first, that the purpose of the award of damages is to restore the plaintiff to his position before the loss occurred or damage caused and secondly, that the plaintiff must act reasonably to mitigate his loss. If the article damaged is a motor car of popular make, the plaintiff cannot charge the defendant with the cost of repair when it is cheaper to buy a similar car in the market. On the other hand, if no substitute for the damaged articles is available and no reasonable alternative can be provided, the plaintiff should be entitled to the cost of repair in the eye of law.”

**The Forgotten Man - Victim**

The victim is essentially an inseparable part of crime. Therefore the phenomenon of crime cannot be comprehensively explained without incorporating the victim of crime. Crime victim, despite being an integral part of crime and a key actor in criminal justice system, remained a forgotten entity as his status got reduced only to report crime and appear in the court as witness. Many believe that the victim is the most disregarded participant in criminal justice proceedings. It is, therefore, the Indian higher courts have started to award the compensation through their writ jurisdiction in appropriate cases.

However, it is the shortcoming of our present jurisprudence that somewhere it provides the accused almost all the facilities like right to fair trial, bail, legal aid etc., but the victim is devoid of any respite in socio-economic terms. Time to time courts has directed the State authorities to provide all necessary facilities and ensure that human rights of criminals

---

34 AIR 1997 Del 201
35 (1970) 1 All ER 225 at 240
are not violated.\textsuperscript{39} And the victims of crime are entirely overlooked in misplaced sympathy for the criminal. The guilty man is lodged, fed, clothed and entertained in a model cell at the expense of the State.\textsuperscript{40} The victim instead of being looked after is contributing towards the care of prisoners during his stay in the prison. Krishana Iyer, J. in \textbf{Rattan Singh v. State of Punjab},\textsuperscript{41} aptly highlighting the apathy of law to a victim of crime, observed:

“It is a weakness of our jurisprudence that victims of crime and the distress of the dependents of the victim do not attract the attention of law. In fact, the victim reparation is still the vanishing point of our criminal law. This is the deficiency in the system, which must be rectified by the legislation.”

Few decades ago the criminal justice system adopted the idea of compensation for victim. Earlier it would have been difficult to find any criminological agency (official, professional, voluntary or other) or research group working in the field of victims of crime, or which considered crime victims as having any central relevance to the subject apart from being a sad product of the activity under study-criminality. To officials the victim was merely a witness in the court case; to researchers either the victim was totally ignored or was used as a source of information about crime and criminals.\textsuperscript{42} However, in ancient civilizations the victim of an offence was the central figure in any criminal setting. In our own pre-modern polity, the injured or the victim had a vital say in matters connected with restitution or retribution. But slowly, as the one civilization gave way to another, private revenge public justice with the govt. taking on the responsibility for meting out justice, the offender has become the \textit{prima donna} and the victim is completely forgotten. Penologists, jurists, psychologists, sociologists, socio-psychologists, psychiatrists, criminologists, social-workers, and the government vie with each other in finding explanations, reasons, excuses, why a crime is committed. So they give stress only and only on the crime and criminal.\textsuperscript{43}

Victim is totally ignored. He enters the gateway to criminal justice. He is faced with interrogation, delays, postponements, court appearance, insults at the hands of people


\textsuperscript{40} Some of the rights of an accused that have been recognized and guaranteed by the Constitution are: right to equality and equal protection of laws; right against \textit{ex post facto} operation of law; protection against double-jeopardy; protection against self-incrimination; right to have freedom from unwanted arrest and matters incidental thereto; right to legal defence; right to have public hearing and speedy trial; right relating to pre-trial detention and matters incidental thereto; and right to approach higher judicial authority by way of appeal, etc.

\textsuperscript{41} 1979 (4) SCC 719.

\textsuperscript{42} \textit{Ibid}

\textsuperscript{43} Rajan, V.N. \textit{Victimology in India} 2, Allied Publishers Pvt. Ltd. (1981)
including police officer and lawyers, loss of earnings, waste of time and frustration and painful realization dawns on him that the system does not live up to its ideals and does not serve him—it serves only itself and its minions. If the victim happens to be a woman her lot is much worse. The assumption that by punishing the offender the victim receives ‘justice’ is of dubious value today because of the decreasing number of successful investigations and the still smaller number of convictions in the criminal justice system. If the victim gets back his lost property he is lucky; if he is not harassed and humiliated in the investigative and trial procedures he should thank his stars. Given the sickening delay, corruption and technicalities in proof, many victims tend to keep away from reporting crimes and sometimes take recourse to private vengeance. Either way, the criminal justice system suffers in not being able to prevent crimes or to punish the guilty when crimes occur in society. The long-term implications of the situation are indeed alarming for public security, human rights and governmental accountability.

Basically, the purpose of criminal justice system is to safeguard the rights of the individuals and the state against the intentional invasion of the criminals who pollutes the society by violating societal norms. Several state agencies have always worked in protecting the rights of the criminals and victim is not provided any compensatory relief. However, the idea of compensation to victim of any wrong is connected with the legal system in two ways; firstly, the legal system has to regulate the relationship between the victim and the wrongdoer and secondly, it has to regulate the relationship between the victim and administration of justice. It becomes imperative to understand the basic concept of victim. The Apex Court in Rattiram & Ors. v. State of M.P. has aptly emphasized on protection of victims rights:

“Criminal jurisprudence, with the passage of time, has laid emphasis on victimology which fundamentally is a perception of a trial from the view point of the criminal as well as the victim. Both are viewed in the social context. The view of the victim is given due regard and respect in certain countries. It is the duty of the court to see that the victims’ right is protected.”

---

44 Ibid
46 AIR 2012 SC 1485
Recommendations of 154th Law Commission of India

The 154th Law Commission Report on the Cr.PC. devoted an entire chapter to ‘Victimology’ in which the growing emphasis on victim’s rights in criminal trials was discussed extensively as under:

“1. Increasingly the attention of criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimization and protection of victims of crimes. Crimes often entail substantive harms to people and not merely symbolic harm to the social order. Consequently the needs and rights of victims of crime should receive priority attention in the total response to crime. One recognized method of protection of victims is compensation to victims of crime. The needs of victims and their family are extensive and varied……..

9.1 The principles of victimology has foundations in Indian constitutional jurisprudence. The provision on Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) form the bulwark for a new social order in which social and economic justice would blossom in the national life of the country (Article 38). Article 41 mandates inter alia that the State shall make effective provisions for “securing the right to public assistance in cases of disablement and in other cases of undeserved want.” So also Article 51-A makes it a fundamental duty of every Indian citizen, inter alia ‘to have compassion for living creatures’ and to ‘develop humanism’. If emphatically interpreted and imaginatively expanded these provisions can form the constitutional underpinnings for victimology.

9.2 However, in India the criminal law provides compensation to the victims and their dependants only in a limited manner. Section 357 of the Code of Criminal Procedure incorporates this concept to an extent and empowers the Criminal Courts to grant compensation to the victims……..

11. In India the principles of compensation to crime victims need to be reviewed and expanded to cover all cases. The compensation should not be limited only to fines, penalties and forfeitures realized. The State should accept the principle of providing assistance to victims out of its own funds…”

Definition of Victim

The connotations of term ‘victim’ vary in different legal, social, psychological or criminological contexts. The penal codes of the erstwhile USSR describe the victim as follows.47

47 Supra note 43 at 12
1. Those who have as a direct result of a crime suffered moral physical or material damage;
2. Those who have suffered physical, moral, or material damage throw and attempted offence;
3. Those whose material damage caused by the crime was made good after the crime, either by the criminal himself or with the help of Militia or of an individual action;
4. Close relation of person who died as a result of a crime.

According to Fattah (1966),\(^{48}\) “the Victim may be specific such as physical or moral person (Corporation, State, and Association) or non specific-and an abstraction.” Quinney (1972) defines “The victim is a conception of reality as well as an object of events. All parties involved in sequence of actions construct the reality of the situation. And in the larger social contacts, we all engage in common sense construction of the crime, the criminal, and the victims.”\(^{49}\) Separovic (1975) states “We consider a victim as anything, physical or moral person who suffers either as a result of ruthless design or accidentally. Accordingly we have victim of crime or offence and victims of accidents.”\(^{50}\) Castro (1979) says “A Victim is a variable of crime or is an accident producing factor for others and for him.”\(^{51}\) In wider perspective defined by Roy Lambron (1983-84) “___ a person who has suffered physical or mental injury or harm, mental loss or damage or other social disadvantage as result of conduct.”\(^{52}\)

1. In violation of national penal laws, or
2. deemed a crime under international laws; or
3. constructing a violation of internationally recognized human rights, norms, protecting life, liberty and personal security; or
4. which otherwise amounts to “an abuse of power” by persons, who, by reason of their position of power by authority derived from political, economic or social power, whether they are public officials, agents or employees of the state or corporate entities, are beyond the reach of the loss which;
5. although not prescribed by national or international law, causes physical, psychological or economic harm as severe as that caused by abuses of power

\(^{48}\) Id at 13
\(^{49}\) Ibid
\(^{50}\) Ibid
\(^{51}\) Ibid
\(^{52}\) Ibid
constituting a violation of internationally recognized human rights norms and create needs in victims as serious as those caused by violations of such norms”

Thus the term ‘Victim’ means a person who has been victimized by another person against whom legal action may be taken for compensation and allied relief. Victim in relation to criminal justice administration means victims of rape, victims of murder, victims of cheating, victims of criminal breach of trust etc. i.e. victims of crime only.  

In 2008, an amendment in Cr. P.C. s.2(wa) defines that “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. This definition should cover wider area.

**Justification For Victim Compensation**

Victim compensation is a novel idea and if successfully meted out it retains the equity between the injured and the injurer. Victim’s ego gets satisfied and he feels sense of belongingness and security in the society. The modern world has almost discouraged the reimbursement to the victim by offender or his family because the state sponsored punishment supplanted victim and family reparations. The restitution has replaced by punishment. As justice should not only be done but it must be seen to have been done, therefore according to punishment to the offender or violator of the rights be it may legal rights, fundamental rights or human rights, of an individual is just the former part of justice i.e. the justice has been done by punishing the culprit. But the later part that it must be seen to have been done still requires something more to be done. It requires just not only punishment to the accused but caring for the victim and protection of his rights and supporting him in times of distress.

The idea of victim and compensation to such victim is not new but was existing in the ancient time, which got lost in the later period when the state emerged focusing primarily on retribution on behalf of a victim by itself. The later criminal justice system due to its’ over emphasis on the offender and his rights, lost right of the victims. After Independence, we the people of India devised for our self and excellent piece of state craft in the form of constitution of India, wherein due to the commitment to the human dignity, we classified certain rights as fundamental rights was done and granting of power to the various wings

---

54 Inserted by The Code of Criminal Procedure (Amendment) Act, 2008, Received the assent of the President on 7th January, 2009, Act Published in the Gazette Of India 9-1-2009, Part II Schedule 1 Extraordinarily P.1 (No.6).
governing “we the people” under the expectation that they shall never toy with these basic rights, took place. Apart from it, India became signatory to various international covenants and conventions with regard to the human rights which also warrant the state to take care of the human rights and other rights mentioned therein which are primarily indispensable so far as the human being is concerned.  

REVIEW OF LITERATURE

Rajan, V.N. (1981) in his book, ‘Victimology in India’ traces the history of victimology in India and highlights the emerging problem of victims. He exhibits the plight of victim who is forgotten man under criminal justice system. The author examines various problems of victims i.e. interrogations, delays, postponements, court appearing and insult at the hands of people including lawyer and police, loss of earnings, waste of time and frustrations. The author suggests that through victim compensation judiciary can enhance the faith of people in criminal justice system.

Vibhute, K.I. (1990) in his article, ‘Compensating Victims of Crime in India : An Appraisal’ attempts to examine and evaluate the law in India governing payment of compensation by offenders to victims of crime for ‘loss’ and ‘injury’ caused to them by commission of the offence. The author has found that in India there is neither a comprehensive legislation nor a statutory scheme providing for compensation by state or offender to victims of crime. The state generally makes to the innocent victims of violence and major accidents, an ex-gratia payment, which is not only ad hoc and discretionary but also inadequate.

The 142nd Report of Law Commission of India (1991) on, ‘Concessional Treatment for Offenders who on their own initiative choose to Plead Guilty without any bargaining,’ the Commission has analysed the problems arising on account of abnormal delays in the disposal of criminal trials and appeals that leads to the explosion of the number of under-trial prisoners languishing in jails for very many years. The Commission accordingly felt that some remedial legislative measures to reduce delays in the disposal of criminal trials and appeals and also to alleviate the suffering of under-trial prisoners in jails awaiting the commencement of the trials were called for. The Commission, therefore, *suo moto* took up this matter and invested considerable time and deliberations in order to formulate proposals on this subject. The present report recommending the introduction of the concept of concessional treatment for those who choose to plead guilty without any bargaining under the

---

56 *Ibid*
authority of law informed with adequate safeguards, is the culmination of this exercise on the part of the Commission.

Raina, S.C. (1993) in his article titled as, ‘Apex Court and Evolution of Victimology Jurisprudence’ has made an endeavour to look into the adequacy of legal provisions relating to the payment of compensation to victims. The constitutional imperative to provide security to life and property of its citizens and the judiciary has set in India to uphold the claim of compensation by the victim within the purview of Fundamental Rights.

Sehgal, B.P. (1993) in his article, ‘Compensation to Victims of State Excesses- A New Dimension in Field of Victimology in India’, has made an attempt to analyse the circumstances under which compensation can be given to the victims of state of excesses. The author has explained the role of judiciary in awarding compensation to victims along with conclusion and suggestions.


Bajpai, G.S. (1997) in his book, ‘Victim in the Criminal Justice Process,’ exposes several imbalances and loopholes in the existing system of criminal justice in India. He suggests that the state must owe the responsibility to compensate crime victims and the victim should have a right to get compensation in certain cases. The core theme of his research work is the victims’ problems and grievances vis-à-vis criminal justice agencies. His study proposed a comprehensive scheme of victim assistance in India.

Das, B.B. (1997) in his book, ‘Victims in Criminal Justice System,’ painstakingly presents a fairly comprehensively understanding of victimology worldwide. He found that the victim of crime is a “forgotten man” in the criminal justice system. CJS is capable of providing adequate relief to victims but the ability of the criminal justice system to meet this challenge has failed to keep pace. The interest of victim involvement in criminal justice system and enhancement of the victim rights has been largely a matter for criminologists, social scientists rather than legislative and popular political interest. The judicial responses have often been negative. There is a necessity of comprehensive victim notice law. The most important thing court can do for victim is to provide compensation. In India, the law relating to compensation is basically contained in s.357 of Cr.P.C., 1973. But this provision leaves it
entirely to the discretion of the court. He suggests for establishment of victim assistance and compensation board to provide assistance and compensation to the victim of crime and consolidated victim welfare fund may be created on a statutory basis to meet the immediate financial assistance that some victims in distress will need, inclusive of medical and hospitalisation expenses and compensation.

Albanese, J.S. (2000) in his book, ‘Criminal Justice’, envisages, conceptualizes and provides the history of plea bargaining in American. His study also shows that 91 percent of cases are resolved through guilty pleas in America. He also analyses that the over reliance on plea bargaining can result in abuses of this beneficial concept.

Gaur, K.D. (2002) in his book ‘Criminal law and Criminology’ designs compensatory scheme under different statutes. He also cites a few judicial pre-arrangements of the constitutional law courts that compensated victims of crime. He is displeased with victim compensatory scheme and urges the state, courts and society to change their attitude towards victims of crime and offers a few suggestions to make the compensatory scheme more comprehensive.

Rai, H.S. (2004) in his article on, ‘Compensatory Jurisprudence and Victims of Crime’ depicts the problem and grievances of victims. The present criminal justice system exhibits a paradoxical situation where the retribution on the part of the victim is taken by the state, but the victim gets nothing more than a mere satisfaction and actually he warrants more than that. The author examines the criteria of awarding compensation to victims of criminal in other countries.

Vibhute, K. I. (2004) in his book ‘Criminal Justice’, sketches a crime victim compensatory legislative scheme in vogue and highlights its underlying spirit and extensively deliberates on the emerging legislative trends and paradigms intending to render justice to crime. He exhibits his displeasure over the inadequacy of the existing fragmentary legislative framework governing the payment of compensation to victims of crime in India. He stresses the need to redesign the existing offender-reform-oriented, peno-criminal administration of justice model so that victims of crime also receive equitable attention and just share in the administration of criminal justice.

Pasayat, A. (2006) in his article, ‘Plea bargaining’ has focused on new concept of plea bargaining under criminal justice. He defines the meaning of plea bargaining and its types. He analyses it from three points of view i.e. offender, victim and judges. He has also compared the American position with Indian position.
Mundrathi, S. (2007) in his book ‘Law on Compensation’ has traced the development of law relating to victims of crime and abuse of power. He gives emphasis on jurisprudence of compensation to victims of crime. He describes the compensation to victims of crime under general as well as special laws and abuse of power developed by the international organizations. He suggests that there should be a comprehensive legal code for victim compensation. The time has come for the legislation to stop shrinking its duty. And interim relief should be provided to the victim to enable him or her to successfully fight a case in court, meet medical and other ancillary expenses.

Nagpal, V. and Singh, K.P. (2007) in their article, ‘Plea bargaining in India- A Critique’, discusses about utility of the concept of plea bargaining in India. The criminal justice system of India is crippling under the weight of lengthy trials. Plea bargaining is one such experiment that will help in reducing overburden of the courts. But while practising this, a close watch is required otherwise it can become a curse.

Pradeep, K.P. (2007) in his article on ‘Plea Bargaining – New Horizon in Criminal Jurisprudence’ defines the new concept of plea bargaining. He traces the historical background of plea bargaining and its advantages and disadvantages. His study is comparative and critical in nature. He observes that defense lawyer, trial judge and prosecutor as the fundamental elements in the efficient working of plea bargaining.


Rai, S. (2007) in her book entitled ‘Law relating to Plea Bargaining’ introduced the concept of plea bargaining along with its history, functions and roles, its considerations etc. She also elaborated the role of prosecutor, defence counsel, judge in facilitating plea bargaining. She studied the practice of plea bargaining at international level (USA, UK, Australia, Canada) as well as India. The major lacuna is that her book is that it is only textual and no commentary or conclusions have been provided.

Dube, D. (2008) in her article, ‘Compensating Victims- Need for Legislative Intervention’, seeks to highlight the plight of victims in the criminal justice system with
special reference to victims of rape and argues that a compensatory scheme is necessary to improve the present plight of victims in the system.

Pandey, K.A. (2008) in his article, ‘Victims of Abuse of Power: Global Developments and Indian Response,’ looks into historical development of the recognition of rights of victims of abuse of power of power and underlines the fact that of political will on the part of the Member States in implementing the jus cogens norms set out for wiping the tears of the victims of abuse of power has left international instruments as dead letter. The paper also emphasises that despite hopeless inadequacy of legislative measures in India in the field of protection of rights of victims of abuse of power, the Supreme Court of India through progressive judgements reading international instruments against abuse of power into the domestic law, vigorously tried to fill the lacunae.

Singh, B. P. (2008) in his article entitled, ‘Compensation to the Victims of Crime and Judicial Trends in India,’ has traced out that the main emphasis in the system is to punish the offender, seek his reformation and rehabilitation. The author has also explained that the said system does not take into consideration the rights of victims of the crime regarding compensation and restitution. The victims of crime are mostly neglected in the administration of criminal justice system. There is neither a comprehensive legislation nor a statutory scheme providing for compensation by the state, or the offenders to the victims of crime.

Goel and Goel (2009) in their article on, ‘Compensatory Jurisprudence for Victims of Crime in India: A Comparative Analysis of the Legislative and Judicial Precedents in the Backdrop of International Norms and Standards,’ have explored comparative provisions, both legislative and constitutional, which incorporate the idea of compensatory jurisprudence and defines the ‘constitutional duty’ of Indian courts to implement the legal principles stipulated therein and fulfill their international obligations in order to foster law, complete justice and international social order.

Harini, C. (2009) in her article, ‘A Unique Remedy to Reduce Backlog in Indian Courts,’ states plea bargaining quickly arising as an alternative to the existing legal measures for providing a cheaper and expeditious trial. At the same time there are practical difficulties existing in its working. While studying the meaning, history, salient features of plea bargaining the author has also criticised the plea bargaining by saying that this so-called measure to speed up justice only speed up the miscarriage of justice. She has also provided certain suggestions to make the plea bargaining a really effective remedy to reduce backlog of cases and to facilitate speedy justice.
Khan, P.A. (2009) in his article, ‘A Unique remedy to reduce backlog in Indian Courts’, has explained that plea bargaining will advance speedy trials and helps in reducing the burden of courts and allows concentrating in more and societal issues. The author has also studied its applicability, procedure, judicial trends in India.

Rao, K.S. (2009) in his article, Alternative Dispute Resolution in Criminal Jurisprudence,’ concludes that Indian Courts are flooded with astronomical arrears of cases and reduction of backlog of cases is very important and out of pending cases most of the cases arising from criminal jurisdiction and the rate of conviction is very low. And plea bargaining is an alternative dispute redresser in criminal jurisprudence. Judges and advocates have to acknowledge the importance of plea bargaining system. The author suggests that it should be considered as compromise but not ideal.

Raval, K. (2009) in her article, ‘A Unique Remedy to Reduce Backlog in Indian Courts’, has statistically studied the delays of cases and overburdened jails in India. The author has provided plea bargaining as a remedy to reduce this backlog. She has also discussed the types of plea bargaining and its position in the world and present Indian scenario and its application in Indian criminal justice system. She has concluded by saying that criminal justice system is unique and in the current degenerating situation, this unique remedy seems to be the only panacea. It will help in achieving the two-pronged objectives i.e to secure conviction and to reduce pendency simultaneously. The current scenario of the criminal justice system in India demands a panacea for the astronomical arrears in the courts and the overcrowded prisons. Plea bargaining is a remedy. All over the world, many countries have recognised it as a part and parcel of their criminal justice delivery system.

Singh, R.K. (2009) in his article entitled ‘The Emergence of Compensatory Jurisprudence and Protection of Human Rights,’ has articulated few but relevant judgements of Supreme Court and High Courts on compensation under Arts. 32 and 226 of the Constitution of India for public wrong, particularly, deprivation of human right i.e. right to life and liberty. The author has also made a humble attempt for projecting the problem, in the perspective and growing modern need of compensatory jurisprudence for protection of human rights.

Patil, D. (2010) in her article ‘Analysis of Plea bargaining in India’ urges that the technique of plea bargaining will be proper answer to the overburdened criminal courts. She has used National Crime Record Bureau data of 2006 to bring forward the real picture of overburdened jails in India. She appreciates the legislature that it has done good job by passing the Criminal Law (Amendment) Act, 2005 and adding the provisions of plea
bargaining in the Code of Criminal Procedure, 1973. She stresses that now the ultimate responsibility posed in judiciary to keep the spirit of plea bargaining alive. The judges should endeavour for the disposition of mutually satisfactory solution agreeable to accused, victim and prosecutors as well.

Singh, R and Sonal, A.K. (2010) in their paper, ‘Plea bargaining A Unique Alternative’, elucidated the importance of plea bargaining in Indian judicial system because of the prevalence of lengthy trials and overburdened courts. While explaining the concept, kinds, effect and growth of plea bargaining in Indian judicial system the authors consider this concept to unload backlog cases and facilitate speedy trial, reduction in number of undertrial prisoners. Plea bargaining can again restore people faith in Indian judiciary.

Kakkar and Ohja (2011) in their article on, ‘An Analysis of the Vanishing Point of Indian Victim Compensation Law’, have focused on reforms toward a restorative criminal justice system hinged on the amendment made to the Indian Code of Criminal Procedure, 1973 in 2008. In this paper the authors have revealed that these amendments were undertaken by the government in order to reform India’s archaic criminal laws. The major thrust of the victim related amendments were on defining ‘victim’ and recasting existing defunct laws related to the provision of compensation to victims. Unfortunately the major fallacy of the recent law is that it once again seems to leave the provision of compensation to the sole discretion of judge. The prime focus of the paper is an analysis of the above-mentioned amended law related to victim compensation and shortcomings of the same.

Randhawa, G.S. (2011) in his book, ‘Victimology and Compensatory Jurisprudence,’ has tried to peep into the glorious past of our country and traced the chronological stages of developments of concept of victimology and compensation. The cases discussed during the period of Mughal Empire reveal that victims had many rights in terms of ‘blood money’ and ‘right of retaliation.’ The study also includes present time role of police and courts in the victimization process, and also connections between victims and other societal groups and institutions, such as media, business and social movements. The author has appealed to pay immediate attention towards implementation of laws in true sense. The author has studied the basic concept and definitions of various jurists, nature, scope and criminal-victim relationships, national as well as international prospect of victimology in India and Europe and USA in order to give inputs regarding victim’ role in the past. In Indian scenario many important decisions rendered by our honourable Supreme Court and High Courts have also been discussed.
Goyal, A. (2012) in his article on, ‘Victim right to access to justice’ seeks to address the rights of victims under the Indian criminal justice system. The author has also tried to analyse the rights which are recognised in international conventions and other countries and has made some suggestions which may be incorporated to reform and support our criminal judicial system.

Naval, S. (2012) in her article, ‘Victim Compensation under Criminal Justice System,’ studies the apathy of victims of crime being a neglected lot in the whole judicial process. While defining victim she overview the laws related to compensation to the victim along with its limitations and suggestions.

Broadly speaking the above noted studies have hardly discussed the institutional strategy, design under Cr.P.C. for recovery and payment of compensation to victims of crime. This study requires incisive, analysis of the development, recognition and effectiveness of statutory positions applicable to all the cases. The present articles are seemed to be verbatim. Thus the authors have shown very casual approach to attempt on this subject. There is lack of detailed study on this subject i.e. very few books are available on compensation and plea bargaining.

OBJECTIVES OF THE STUDY

1. To trace the historical evolution of compensatory jurisprudence under criminal justice system.
2. To evaluate s.357 of Code of Criminal Procedure, 1973 and the role of judiciary in awarding compensation to victims for breach of public law duties, negligent acts of officers of state, illegal detention, custodial death, rape, torture etc.
3. To ascertain the awareness about the victim’s right and to be examined the various loopholes under the existing compensatory statutory provisions and rules framed there under.
4. To examine the recommendations of commissions and committees in the light of selected other countries on the concept of plea bargaining.
5. To analyze the merit and demerit of concept of plea bargaining and to streamline the law relating to compensation with special reference to plea bargaining.
6. To examine the functioning of National Human Rights Commission in recommending and strengthening the compensation to victims.
HYPOTHESIS
1. There is a general feeling that existing legal framework providing for compensation by offender to his victim for loss suffered or injury caused by commission of offence is inadequate.
2. The courts have seldom invoked their enabling statutory power to compensate victims of crime.
3. There is problem of backlogs and docket management leading to prolonged trials.
4. The concept of plea bargaining is a potent tool to disburse criminal administration of justice.

SCOPE OF THE STUDY
The present study is to be covered up the statutory as well as constitutional provisions in the light of reported judgments of higher courts. Efforts may be made to review the compensatory provisions under criminal justice with a view to offer some suggestions which may helpful to the legislature as well as researchers in various ways. Endeavour shall be made to examine the awareness of general public towards the rights of victims. An attempt also be made to examine loopholes which need a fresh look in modern prospective in the light of other developed countries. This research shall also approach the problem of backlogs and docket management leading to prolonged trials. Whether existing provisions may help to deliver prompt, effective and cheap justice to the victims of crime or not?

RESEARCH METHODOLOGY
For the completion of this research work, primary as well as secondary sources of information have been utilized to collect data. The other sources of information shall include standard reference books, law reporters (AIR, SCC, Crl.JL, RCR (Crl.)), Committee and commission reports, journals, magazines and newspapers. The method of research used in the proposed study is analytical, comparative, critical and empirical in nature. For this purpose the survey of decided cases from (2008-2012) by Supreme Court as well as High Courts, as reported in different law reporters have been analysed and enlisted in tabular form. The present study also takes into account, the report of Law Commission of India and various other committees’.

CHAPTER SCHEME
The whole study is divided into seven chapters.
The first chapter of the research is introductory in nature. The researcher tries to bring forward the concept of compensation as a counter-balancing feature or factor that assists victims of crime to overcome their financial constraints by imposing adequate penalty to the
accused. In second chapter the historical perspective of compensation has been traced. The chapter is further divided into three sub-parts viz: Ancient Era, Middle Ages and Modern times. The concept of compensation existed in same form or the other in old Germanic law, Code of Hammurabi and Law of Moses, Hindu Law. It was quite prevalent in Middle Ages as well and in modern times it lost shine. The third chapter of the research work is devoted to the comprehensive study and analysis of the legal provisions of compensation in India. Further this chapter has divided into two parts i.e. general laws and special laws. In general law the Code of Criminal Procedure, 1973, Constitution and in Special laws like Probation of Offenders Act, 1958, Motor Vehicle Act, 1988 etc. have been discussed. The fourth chapter depicts the international perspective of compensation. It concentrates on the compensatory provisions of other countries. As with the adoption of U.N. declaration on Basic Principles of Justice for victims of crime and Abuse of Power in the year 1985, many countries in the world have either incorporated the cardinal principles of this instrument in their national laws or made new enactments to offer assistance and required protection to crime victims like UK, USA, New Zealand, South Africa, Australia and France. The fifth chapter has depicted the whole picture of the new concept of plea bargaining i.e. its merits, demerits and its need in India. In this chapter plea bargaining is explained as pre-trial negotiation between accused and victim in which the accused pleads guilty in return some favour. This chapter has also traced the history of plea bargaining. The practice of plea bargaining is more prevalent in USA than other countries. The sixth chapter deals with the role of judiciary in awarding compensation to the victim of crimes. The chapter has been divided into two parts; the first part shows the role of judiciary. Along with this, a survey of last five years of reported cases (from Jan. 2008- Dec. 2012) in which Supreme Court and High Courts have awarded the compensation to the victims of crime. The findings of honourable Courts have been enlisted in a tabular form and few observations have also been made in this chapter. The second part of this chapter reveals the role of National Human Rights Commission (herein after NHRC) in recommending compensation as the role of NHRC is remarkable. In the last chapter concludes the research work with some concrete suggestions. The study is a humble effort towards the main objective of providing a viable legislation which could provide compensation to the victims of crime so that the victim is not ignored in the whole process of administration of justice. Thus this research is an attempt to streamline the existing laws

57 Adopted by General Assembly resolution 40/34 of 29th November, 1985
relating to payment of compensation, particularly with special reference to plea bargaining under criminal justice system.