CHAPTER
FIVE
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RESTITUTIVE JUSTICE TO VICTIMS

Restitutive justice should be principle objective of the criminal law, requiring the offender to repay the victim from his own resources or from wages to be earned by the offender in the prison. Restitution is viewed as the best way to the offender to realize the harm he has done and to accept genuinely his responsibility by repairing it, while also offering greater promises of rehabilitation than fine or imprisonment. For offenders, who can safely be released, a restitutive theory offers an alternative to imprisonment by providing emotional and economical satisfaction to the victims, vicarious satisfaction to the family and friends and some degree of deterrence to the offender. The Rehabilitative value of restitution is recognized by the judges who impose restitution because of its impact on the offender and its promotion on correctional aims by legislature that authorize restitution as a criminal sanction; and by community service programmes that use restitution as a rehabilitative tool.

I. Restitution: Restitution can be defined as a sanction imposed by the court on a person convicted of a crime which requires the convicted person to make a monetary payment to the victims or some times, to donate his labour for the benefit of the community. The word reparation, restitution and compensation is often used by writers interchangeably, in criminal victim relationship, though they represent different view points. All of them allude procedures for restoring victims to his pre crime conditions. Reparation is obtained from the offender by the victims of crime Restitution is concerned with the reparation of the victims

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1 Bharat Bhushan Dass-Restitutive justice
loss or better restoration of his position and the rights that are damaged or destroyed by the offender. It is an indication of responsibility of the offender. It is penal in character and thus represent a correctional goal in criminal case. Compensation is concerned with the counter balancing of the victims loss that result from criminal act. It means making amend the harm caused to the victim. It indicates the responsibility of the State and claims State responsibility.

Restitution serves the retributive goals of punishment. It is constructed to fit the crime and to emphasize the wrongfulness of the offence and defendant's moral responsibility. In practice as well as in theory, restitution orders unlike damage awards are specifically geared towards achieving the objectives of the Criminal Justice System. When determining the amount specified in a restitution order, most court consider not only the amount of the victim loss, but also the rehabilitative, deterrent and retributive effects of the order.

II. Emerging Trends & Legislative Paradigms

The Law commission of India in its hitherto submitted Reports on the Indian Penal Code, 1860 (IPC) and the Code of Criminal Procedure, 1898 and of 1973 has delved into justice to victims of crime and has also suggested some proposals for reform. Similarly, in 1996, the National Law School of India University, Bangalore (NLSIU) prepared a Draft Bill 'the Victim (Criminal Injuries) Right to Assistance Bill, 1996' (hereinafter NLSIU Bill). Recently, in March, 2003, the Malimath Committee, in its Report on Reforms on the Criminal Justice System in India, has, among other things, also delved into 'justice to victims'. and urged the legislature to enact an appropriate law on the subject to enhance credibility of the CJS in India. A careful reading of these Reports of the Law Commission and of the Malimath Committee, and the NLSIU Bill, however, discloses different 'trends' in, 'approaches' to, and 'legislative models' are outlined here below with their respective contributions and limitations, if any.

3 Stephen Schafer, Supra page 11 f.n.2P.
A) Compensation as an ‘additional punishment’ under the IPC?
The Fifth Law Commission, in its 42nd Report on the IPC, delved into compensation to victims of crime in India. While doing so, it referred to and highlighted the ‘three patterns’ of compensating victims of crime reflected in the Codes of Criminal Procedure of France, Germany and (the erstwhile) Russia. The ‘three patterns’ are; (i) compensation by the State, (ii) compensation by an offender either by asking him to pay it from the fine imposed or a specified amount, and (iii) duty to repair the damage done by the offence. In France, a crime victim’s claim for compensation (action civil) can be combined with criminal proceedings against the offender. While under the German Code of Criminal Procedure an ‘injured person’ (or his heir) may, in the criminal proceedings, assert against the accused his claim ‘involving property rights arising out of the offence’. The German Criminal Procedure Code, to facilitate the filing of such claim, further provides that an injured party should be ‘notified’ of the filing of criminal proceedings against an accused. A victim of crime (or his representative) is also entitled to ‘participate’ in the criminal trial. The (then) Criminal Code of Russia imposes a ‘duty’ on the offender ‘to make amends for the harm caused’. Execution of this duty consists in (i) direct elimination, by one’s own resources, of the harm caused, or (ii) compensation, with one’s own means, for material loss, or (iii) a public apology.

The Law Commission, however, felt that the ‘elaborate procedure’ provided under the French and German Codes would be ‘unsuitable’ in our (Indian) courts and the creation of a legal right in favour of a victim of crime to join criminal proceedings as a third party (in India) would be ‘unwise’. It also ‘failed’ to see any ‘great advantage’ in providing (in India) for ‘duty to make amend for the harm caused’ or ‘payment of compensation’ to them as an additional punishment.

4 Law Commission of India, 42nd report: IPC, (Govt. of India, New Delhi, 1971), at PG 52.
The Commission, accordingly, favoured the payment of compensation (provided under Section 545 of the then prevailing Cr.P.C. of 1898 now Section 357 of the new Cr. P.C. of 1973) to crime victims out of fines imposed on offenders. With a view to giving prominence in the IPC to the payment of compensation out of fine imposed and to conferring substantive powers on trial courts to this effect, if, nevertheless, recommended that a provision enabling a criminal court to direct that the whole or any part of the fine realized from the offender be paid by way of compensation to the victim of crime be inserted in the IPC. However, Justice R.L. Narasimham, a member of the said Commission, doubting the efficacy of the compensatory scheme provided under the (1898) Cr. P.C. and the circuitous procedure involved in the realization of fine and the payment of compensation to victims of crime, mooted for the need to impose a statutory ‘duty’ on offenders, as an additional punishment, to amend the harm caused by them.

These two proposals for reforms recommending improvements in the substantive criminal law for the payment of compensation by the offender for ‘injury caused’ or ‘loss’ suffered by his victim, in essence, reveal two approaches to compensating victims of crime. The first pleads for compensation by a convict out of the fine imposed upon him for committing an offence against the human body, property, defamation, or abetment of, or criminal conspiracy to, commit these offence(s), provided such compensation is recoverable in a civil suit against the convict for loss or injury caused to the person. The second, on the other hand, favours compensation to crime victims as an additional punishment and pleads for imposition of a statutory duty on offenders to compensate, monetarily or otherwise, victims of their crimes. It is unequivocally clear that

5 The substantive clause recommended read- “62. Order to pay compensation out of fine to victim of offence-when ever a person is convicted of an offence punishable under Ch.-16,17 or 21 of this Code or of an abatement of such offence and is sentenced to fine and court is of opinion that compensation is recoverable by civil suit.
the second approach, which not only shows equal concern to victims of crime but also visualizes real reparation of victims of crime, sounds more convincing and appealing.

However, in 1997, the Fourteenth Law Commission, in its 156th Report on the IPC, recalling its earlier recommendation made in 1996 in its 154th Report on the Cr.P.C. for framing a ‘Victim Compensation Scheme’ by State Governments and realizing that the payment of compensation as an ‘additional punishment’ not only requires an inquiry into a variety of circumstances but also a few cases may not warrant compensation by way of punishment, opined that it would be ‘not appropriate’ to include order of payment of compensation in Section 53 of the IPC by way of punishment.

(B) Comprehensive Statutory & State Obligatory Compensatory Scheme

The Fourteenth Law Commission, when the Criminal Procedure Code (Amendment) Bill, 1994 was introduced in the Rajya Sabha and when it was pending before the Parliamentary Committee, was requested by the Central Government to undertake a comprehensive review of the Cr.P.C. of 1973 and to make suitable proposals for reform.

The Law Commission, among other things, identified ‘victimology and compensating victims’ for its deliberation. Exhibiting its sincere concern for victims of crime and justifying the need to ‘redesign and restructure’ the victim-compensatory legislative paradigm in India, it observed.

“Increasingly the attention of criminologists, penologists and reformers of criminal justice system has been directing to victimology, control of

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6 Law Commission of India, 156th report on the IPC, 1997, para 2.16.
7 Chapter-XV: Victimology.
victimization and protection of victims of crime. Crimes often entail substantive harm 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 victim is compensation to victims of crime.”

Referring to the payment of compensation under the provisions of Section 357 of the Cr.P.C. and expressing its reservations about the efficacy of the statutory provisions and recalling its meager use by courts in India, the Law Commission asserted that the principles of compensation to victims of crime need to be reviewed and expanded to cover all cases. Compensation should not be limited only to fines, penalties and forfeitures realized by the State, it asserted, should also render its assistance to victims of crimes out of its own funds in all cases regardless of the fact whether an accused is acquitted or the perpetrator is not traced (but the victim is identified) or when the offence is proved. The State’s responsibility to make reparation to crime victims can be justified on humanitarian, compassionate, and legal grounds. The State is also under a sort of legal obligation to compensate victims of crime, who suffered because of failure on the part of the state to; maintain law and order; ensure peace, harmony and tranquility in society; protect people and their property; and use its authority to suppress crime and punish offenders. Compensation from the State can also be justified on the ground that the state system, namely, its political, economic and social institutions, generates crime by poverty, discrimination, unemployment and insecurity.

A victim of such a system, therefore, deserves compensation from the State. In this perspective the Law Commission, for the first time, traced the ‘constitutional underpinnings for victimology’ in India. Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV), according to the Commission, form the bulwark for a new social order in which social, economic and political justice form the national life of the country. Article 41 of the Constitution,
which 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’ and Article 51-A, which imposes a fundamental duty on every citizen, inter alia, to have compassion for living creatures’ and ‘to develop humanism’, can, if emphatically interpreted and imaginatively expanded, form the constitutional underpinnings for victimology.

In pursuance of its above outlined concern for victims of crime and the constitutional foundation of victimology in India the Law Commission felt that the victim-compensatory paradigm reflected in Section 357 of the Cr.P.C. of 1973 is inadequate. Echoing its earlier recommendation made in its 152nd Report on custodial crimes and influenced by the Tamil Nadu ‘model’ of compensating victims of crime through a well-designed ‘Victim Assistance Fund’ the Commission recommended a comprehensive victim compensation scheme to be administered, on the recommendations of a trial court, by the Legal Services Authorities constituted at the District and State levels under the Legal Services Authorities Act, 1987. The suggested clause recommending the payment of compensation to victims of custodial crimes, inter alia, mandates a criminal court to award, notwithstanding provisions of Section 357, Cr.P.C., compensation of not less than Rs.25,000 and Rs. 1,00,000 respectively to the persons who sustain ‘bodily injury not resulting in death’ and victims of ‘custodial death’. It also mandates the court to order the Government concerned, jointly and severally with the convicted public servant, to pay, as compensation, the amount specified in the order.

Inspired by the Tamil Nadu model and commanded by its zeal and deep concern for victims of crime, the Law Commission also recommends that every State


Government, through a statutory provision to be inserted in the Cr.P.C., be put under a legal obligation to formulate, in co-ordination with the Central Government, a scheme for providing funds for the purpose of compensating victims of crime (or their dependents) who have suffered loss or injury as a result of the crime and who require rehabilitation.

Such a scheme be, on recommendations of a trial court, administered by the Legal Services Authorities constituted at the District and State levels under the Legal Services Authorities Act, 1987. Under the scheme the State Legal Services Authority and the District Legal Services Authority be authorized respectively to quantify and award compensation, on a recommendation of a trial court, to victims of crime. However, the Law Commission desires that these Authorities should have special considerations while compensating victims of custodial crimes, rape, and child abuse; and physically and mentally disabled victims of crimes. The Commission, for the first time, also proposes that a trial court be also empowered to, in appropriate cases, recommend to the District Legal Services Authority (if the compensation in its view is less than Rs.30,000) or to the State Legal Service Authority (if the compensation is more than Rs.30,000) for further rehabilitation of victims of crime. It is further proposes that a crime victim be enabled to approach the District Legal Services Authority and the State Legal Services Authority, as the case may be, for seeking compensation even if the offender is not traced or identified, but the victim is identified, or no trial has taken place.

(C) Victims (Criminal Injuries) Right to Assistance Bill, 1996-NLSUI Bill.

The NLSIU Bill, in consonance with its proposed compensatory scheme for crime victims and its operation, recommends a few minor amendments to clause (b) and (c) of Section 357(1); redrafts Section 357(3) of the Cr.P.C., and suggests the addition of sub-section (3-A) in the Cr. P.C. The recommended redrafted sub-section (3) read as under:-
“357(3). When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to any person, if it is of the opinion that such person has suffered any loss or injury by reason of the act for which the accused person has been so sentenced”.

While the suggested sub section (3-A) of Section 357, Cr.P.C., reads;

“357(3-A). Where an order for compensation has been made under this Section, the Court may direct the whole or any part of the compensation to be paid to any Crime Victim Assistance Authority established under the Victims (Criminal Injuries) Right to Assistance Act, 1996”

(D). Malimath Committee Report-Victim Participation:
The Malimath Committee, interestingly, without making any serious attempts to re-look at the structural or operational aspects of the victim-compensatory legislative frame work designed under the Cr.P.C., devoted a considerable space to ‘Justice to Victims’ in its report9. Very early in the deliberations of the Committee, it was recognised that‘ victims at present do not get the legal rights and protection they deserve to play their just role in criminal proceedings. ‘In every interaction the Committee had with the Police, the Judges, the Prosecution and defence lawyers, jail officials and the general public, this concern of victims was pronounced and a view was canvassed that unless justice to victims is positioned as one of the focal points of criminal proceedings’, the Malimath Committee further said, ‘the system is unlikely to restore the balance as fair procedure in the pursuit of truth. Referring to Section 357 of the Cr.P.C., the Committee observed:

“Not only was the victim’s right to compensation ignored except a token provision under the Criminal Procedure Code but also the right to participate

9 See Government of India, Committee on Reforms of Criminal Justice System, supra n. 10 PP. 75-84.
as the dominant stakeholder in criminal proceedings was taken away from him. The principle of compensating victims of crime has for long been recognized by the law though it is recognized more as a token relief rather than part of a punishment or substantial remedy”.

In the backdrop of the constitutional spirit displayed by the Apex Court in its celebrated judicial pronouncements10 for protecting the basic rights of, and ensuring justice to, victims of crime, the Committee emphasized the need to have a comprehensive victim-compensatory scheme modeled on the Victim Compensation Bill, 1995 prepared by the Indian Society of Victimology and submitted to the Government of India. However, the Committee, for undisclosed reasons, neither sketched in the Report the 1995 Bill nor outlined the scheme designed there under for compensating victims of crime. Curiously, the 1995 Bill is also not included in the “Appendices’ of the Report (Vol.2). It, therefore, becomes difficult, at least for the present researcher, to appreciate recommendations of the Malimath Committee in the light and background of the hitherto proposed different victim-compensatory ‘models’ proposed by the Law Commission and the NLSUI. For the same reasons, it also becomes difficult to perceive and assess positive dimensions, if any, of the recommended compensatory design.

Further, the Malimath Committee curiously has not referred to either of the hitherto recommended victim-compensatory ‘models’. It is, therefore, obviously difficult for the present writer to appreciate either the ‘response’ or the ‘approach’ of the Malimath Committee to these ‘victim compensatory models’. One may convincingly argue that either the Malimath Committee did not think it ‘worth’ even to peep into those models as, probably, it did not find any novelty in them (compensatory models) or in its pursuit for truth in criminal courts, it did not allow itself to be prejudiced by looking into those proposed ‘trends and

legislative paradigms' while designing a 'model' for rendering 'justice to victims'. One might, by taking the risk of being unreasonably bold and unfair to the Committee, accuse the Committee of being totally ignorant of the hitherto victim-compensatory 'models'. Whatever may be the line of argument one wants to advance, the fact remains that it is difficult to know reasons, if at all any, for the Committee's inclination to the victim-compensatory legislative paradigm designed in the 1995 Bill.

Nevertheless, a perusal of 'recommendations' of the Malimath Committee reveals that it, like the Law Commission, strongly feels that compensating victims of crime is a State obligation, whether the offender is apprehended or not, convicted or acquitted. And accordingly it proposes a 'victim compensation law' that provides for: (i) the creation of a 'Victim Compensation Fund' to be possibly administered by the Legal Services Authorities created under the Legal Services Authority Act, 1987, (ii) the scale of compensation in different offences for the guidance of the court, and (iii) the categories of offences in which compensation can not be granted as well as the conditions under which it can be awarded or withdrawn. A 'Victim Compensation Fund', according to the Committee, as suggested by the Law Commission, be generated by pulling together 'fines' recovered, 'funds' generated by the criminal justice system and solicited 'public contributions'. Even if part of the assets confiscated and forfeited in organized crime and financial frauds, the Committee feels, is made part of the fund and if it is managed efficiently, there will be no paucity of resources for compensating victims of crime. In any case, dispensing justice to victims of crime, the Committee asserts, can no longer be ignored on grounds of scarcity of resources.

The merit of the Malimath Committee lies in the fact that it, for the first time, delved into the 'participation' of victims in criminal processes as an inseparable component of justice to victims and suggested a set of recommendations for their
effective participation. The CJS in India, the Committee feels, and rightly so, exhibits its utter insensitivity to victims of crime by denying them the right to participate, except as witnesses, in criminal proceedings and by not giving them an opportunity to assist criminal courts by adducing evidence or putting questions to witnesses. Drawing support and inspiration from the French victim-participatory criminal justice system, the Committee observed:

"His (victim's) active participation during trial will be of great help in the search for truth without inconveniencing the Prosecution. He can supplement the evidence adduced by the Prosecution and put forth his own arguments. He will be of help to the court in the matter of deciding the grant or cancellation of trial. He will adduce evidence in the matter of loss, pain and suffering to decide on his entitlement of interim relief and compensation by way of restitution. Wrongful attempts to withdraw or close the prosecution due to extraneous factors can be resisted if the court were to have the continued assistance of then victim. For all these reasons and more, it is clear that if the criminal proceedings have to be fair to both the parties and if the court were to be properly assisted in its search for truth, the law has to recognize the right of victim's participation in investigation, prosecution and trial".

A. To produce evidence, oral or documentary, with leave of the Court and/or to seek directions for production of such evidence.

B. To put questions to witnesses or to suggest to the court questions which may be put to witnesses?

C. To know the status of investigation and to move the court to issue directions for further investigation on certain matters or to a supervisory officer to ensure effective and proper investigation to assist in the search for truth,

D. To be heard in respect of the grant or cancellation of bail.

E. To be heard whenever prosecution seeks to withdraw and to offer to continue the prosecution.
F. To advance arguments after the prosecutor has submitted arguments.

G. To participate in negotiations leading to settlement of compoundable offences, and

H. To prefer an appeal against any adverse order passed by a court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation.

Malimath Panel Recommendations

In the above context, the Malimath Committee appointed by the Government of India (2003) made a series of recommendations to put the victim back at the centre of criminal proceedings through a series of steps designed to empower him and the court. These include:

(i) The victim, and if he is dead, his legal representative shall have the right to be impleaded as a party in every criminal proceeding where the offence is punishable with seven years imprisonment or more. In select cases to be notified by Government, this right may even be extended to recognized voluntary organizations as well.

(ii) The victim has a right to be represented by an advocate of his choice; an advocate shall be provided at the cost of the state if the victim is not in a position to afford a lawyer.

(iii) The victim's right to participate in criminal trial shall, *inter alia*, include the right to provide evidence, to put questions to witnesses with the leave of the court, to be informed of the status of investigation, to move court to ensure proper investigation, to be heard on issues relating to bail and withdrawal of prosecution, to advance argument after the prosecutor has submitted his arguments, and to participate in settlements of compoundable offences.
(iv) The victim shall have a right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation.

(v) Legal services could include psychiatric and medical help, interim compensation, and protection against secondary victimization.

(vi) The victim compensation law is to be made by Parliament, which will provide for the creation of a victim compensation fund to be administered possibly by the Legal Services Authority. The law should provide for the scale of compensation in different offences for the guidance of the court.

Criminal justice administration will assume a new direction towards better and quicker justice once the rights of victims are recognized by law and restitution for loss of life, limb, and property are provided for in the system. The cost for providing it is not exorbitant as sometimes made out to be. In any case, dispensing justice to victims of crime cannot any longer be ignored on grounds of scarcity of resources.

III. Rationale of Restitution and Compensation.

Criminal Justice administration will assume a new direction towards better and quicker justice once the rights of victims are recognized by law and restitution for loss of life, limb and property are provided for in the system. The victim compensation law is to be made by parliament, which will provide for the creation of a victim compensation fund to be administered possibly by the Legal Services Authority. The law should provide for the scale of compensation in different offences for the guidance of the court. Restitution is one of the forms of compensation for losses/injuries suffered by the victim. In recent years, the plight of victims has attracted adequate attention with the result that new dimensions have been added to the criminological thoughts not only at national but also at the international level with the following rationale:
(i): It would be the responsibility of the State to protect its citizens failing which it shall compensate the victims of crime to prevent individual retaliatory behaviour and to reinforce law abiding conduct.

(ii): In principle, offender must accept the responsibility for the consequence of his wrong doings in conformity with social justice.

(iii): Awarding compensation to the victims by the offender is a part of the punishment that may also have an educational value for the offenders which is therapeutically more beneficial to them.

(iv): The provision of compensation has a practical value in the treatment and rehabilitation process of the offender which facilitate the process of correction in our system of dispensing justice. This kind of punishment can make compensation to the victims as integral part of probation and parole conditions for the offenders.

(v): It is the responsibility of the State to help the needy and distressed persons in a welfare state and in pursuance to that the state should come to their help at the time of their criminal victimization at the hands of perpetrators of crime.

IV. Victim's Rights And Criminal Justice Reforms

Among the many proposals on the table for reforming criminal justice, the one that attracts universal acclaim relates to the status and role of the victim in criminal proceedings. Today he or she is an informant and possibly a witness for the prosecution depending upon the good sense of the police and the discretion of the public prosecutor. Unlike the accused, the victim has no rights to protect his or her interests in the proceedings, which are supposedly conducted on his or her behalf by the state and its agencies. And when the state agencies fail to do their duty, as has often happened in many cases in the recent past, the victim is left to suffer injustice silently or to take the law into his or her hands and wreak vengeance on the offender.
What can be done to give a better deal to the victims of crime to make the proceedings equally fair to both sides?

In 1985, the United Nations adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The Declaration recognized four types of rights and entitlements of victims of crime. They are:

(a) Access to justice and fair treatment — which includes prompt redress, right to be informed of benefits and entitlements under law, right to necessary support services throughout the proceedings, and right to protection of privacy and safety.

(b) Right to restitution — return of property lost or payment for any harm or loss suffered as a result of the crime.

(c) Compensation — when compensation is not fully available from the offender or other sources, the State should provide it at least in violent crimes that result in serious bodily injury, for which a national fund should be established.

(d) Personal assistance and support services — includes material, medical, psychological, and social assistance through governmental, voluntary, and community-based mechanisms.

The United Kingdom enacted the Criminal Injuries Compensation Act in 1995. In 2001 in a report on "Criminal Justice: The Way Ahead," the Home Department found "that many victims felt that the rights of the accused of a crime take precedence over theirs in criminal proceedings." Every time a case is discharged or acquitted or the verdict is perceived to be unjust, a victim's suffering is made worse. During the long proceeding of investigation and trial, victims are not kept properly informed or provided with a sense of security. Too often they are expected to turn up at court for cases that are then adjourned, or are subjected to unnecessarily stressful courtroom experiences.
Crime can leave victims physically injured, emotionally traumatized, with potentially long lasting psychological trauma, all of which can be compounded by severe financial difficulties, observed the U.K. report. The agencies with which victims come into contact, particularly during the period after the crime, do not always understand and respond effectively to their needs. The U.K. report, therefore, recommended the following measures to balance the system of justice in that country:

(a) Legislate to entitle victims with information about release and management of the offenders, and progress of their cases.

(b) Enable victims to submit a "victim personal statement" to the courts setting out the effect of the crime on their lives.

(c) Introduce measures to protect vulnerable victims/witnesses such as screens, video evidence, etc.

(d) Establish a victim's commissioner (ombudsman).

(e) Legislate to produce a Victim's Code of Practice setting out what protection, practical support and information, victims have a right to expect from criminal justice agencies.

In France all those who suffer injuries on account of crime are entitled to become parties to the proceedings from the investigation stage itself. They can assist investigation to proceed on proper lines and move the Court for appropriate directions when the investigation gets delayed or distorted for whatever reasons. They may suggest questions to the Court to be put to witnesses produced in Court. They may conduct the proceedings if the Public Prosecutor does not show due diligence. They can supplement the evidence adduced by the Prosecution and put forth their own arguments. They will help the Court in the matter of deciding the grant or cancellation of bail. They will adduce evidence in the
matter of loss, pain, and suffering to decide on their entitlement of interim relief and compensation by way of restitution. Wrongful attempts to withdraw or close the prosecution due to extraneous factors can be resisted.

The status of victim in criminal proceedings in India is dealt with in a few provisions of the Criminal Procedure Code, which are too insufficient to be considered fair in dispensing equal justice under law (Article 14).

If the victim of a cognizable offence gives information to the police, the police are required to reduce the information into writing and read it out to the informant. The informant is required to sign it and receive a copy of the FIR (Section 154 (1) and (2) of the Cr.P.C.). If the police refuse to record the information, the victim-informant is allowed to send it in writing and by post to the Superintendent of Police concerned (Section 154(3)). If the police refuse to investigate the case for whatever reason, the police officer is required to notify the informant of that fact (Section 157(2)). Alternatively, victims are enabled by section 190 of the Cr. P.C. to avoid going to the police for redress and directly approach the Magistrate with their complaint.

The complaints of victims are many. That they are ill treated or harassed. That the police do not truthfully record the information. Investigation being exclusively a police function, victims have a role in it only if the police consider it necessary. There is no special provision for support to victims of rape to enable them to overcome the trauma and hurt.

In the granting and cancellation of bail, victims have substantial interests though not fully recognized by law. Section 439 (2) allows a victim to move the Court for cancellation of bail; but the action thereon depends on the stand taken by the Prosecution. Similarly, the prosecution can seek withdrawal at any time during trial without consulting the victim (Section 321 Cr. P.C.). Of course, the victim
may proceed to prosecute the case as a private complainant. However, the victim cannot challenge the prosecution decision to withdraw at the trial stage itself.

The compensation provision is of little value. Section 357 says when the sentence of fine is imposed as the sole punishment or any additional punishment, the whole or part of it may be directed to be paid to the victim as per the discretion of the Court. Section 357 (3) makes provision for compensation even if a fine does not form part of the punishment. There is no question of compensation if there is acquittal or where the offender could not be apprehended.

In 1992, the Uttar Pradesh Government through an amendment to Section 357 provided that where the victim belongs to a Scheduled Caste or Scheduled Tribe and the person convicted is not of that category, the Court is obliged to order compensation to the victim11.

Of course, compensation is sometimes ordered to be paid by the state for illegal detention, custodial torture etc. by the constitutional court under writ jurisdiction.

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