COMPENSATORY JURISPRUDENCE IN INDIA WITH SPECIAL REFERENCE TO DISPENSATION OF JUSTICE TO THE VICTIMS OF RAPE: A CRITICAL APPRAISAL

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Abstract

Criminal law, law enforcement agencies, court procedures and the administration of criminal justice almost exclusively focus upon the offender. The law enforcing authorities investigate victim only as a means of finding the offender and securing criminal prosecution against him. The victim is kept aside and left at his own fortune without proper remedies. In criminal law, the phrase "a criminal must pay his debt to society" is often used, and consequently compensation to the victim is not awarded. Currently, there is a movement afoot in several countries (including our own) to reexamine the problem of compensation or restitution to the victim. Rape is the only crime where instead of getting sympathies a victim is socially ostracized and morally degraded with a lifelong stigma on her dignity and character. The mental torture is deep and agony is unbearable. The injury is physical as well as psychological to the victim. Rape involves defilement and dishonour not only of victim but to the whole family. In consonance of our constitutional philosophy of social justice, equitable and effective reparation of victim through compensation becomes imperative. It is true that money cannot repair the chastity and purity which is precious asset of the Indian women, nevertheless if sufficient compensation, assistance and rehabilitation is granted to her, she could not have to depend on the mercy of anybody. Present paper discusses compensatory jurisprudence in India and examines whether
compensation can be a means of dispensation of justice to the rape victims? What is the judicial approach in this regard and whether an extensive compensation programme can be developed to ameliorate the condition of rape victims?

Keywords: Violence, Right-Compensation-Justice-Policies

Introduction
Crime is steadily increasing in modern times, but administration of criminal justice remains generally unsatisfactory from the point of view of the victims of crime. The basic object of the Criminal Justice is to protect the society against crime and to punish the offender. However, Criminal Justice System does not show equal concern to the victims of crime, who suffers loss or injury. The satisfaction the victims get from justice is the punishment inflicted upon the criminal. The object of the punishment is not merely to shelter and reform the criminals but to safeguard the interests of the victims also. To maintain the law and order in the society, the civilized state does not allow a victim to take the law in his hands either to punish the wrongdoer or re-compensate the loss suffered or injury sustained. Traditionally, Criminal Administration of Justice assumed that the claim of the victim is sufficiently satisfied by the conviction and the sentence of the offenders. However, in the present scenario compensatory jurisprudence as new part of criminal law is fast developing as it serves two purposes, firstly, a victim is not lost sight of in the criminal justice system and secondly, an accused convicted is made to realize that he has a duty towards those injured by his actions. Currently, movement is growing in several countries, including our own, to reexamine the problem of compensation or restitution to the victim.

Historical Background of Compensatory Jurisprudence
In the evolution of criminal jurisprudence, the concept of compensation of the victim of the wrong occupied a major place in most legal systems. In early law, an injured person or the relatives of one killed could exact similar vengeance from the wrong doer. Later it was accepted that blood money\(^1\) could be paid in lieu of pursuing the blood-feud, though

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the injured person or the relative was allowed by law the option of taking money or
taking blood for certain offences.

The principle of compensation for victims of crime occupied a prominent place in the
Penal Codes of ancient Greece and Rome. The Roman Law specified progressive rise in
compensation payable depending upon the stage of nature of the crime. Apart from theft,
assault, libel and trespass were other offences in which compensation was payable.

The principle of compensation assumed importance in the Anglo Saxon period. The
'Anglor-Saxons'\textsuperscript{2} first systematically used monetary payments in the form of damages or
compensation to the victim of wrongs. In Anglo Saxon England the criminal had to make
compensatory payments, the Wer or Bot to the victim or his relative and the writ to the
King or the Feudal Lord. The money value set on a man according to his rank was 'wer'
and the compensation 'wergild' or 'bot'. In addition there was wite, a penal fine payable to
the King or other public authority as a penalty for having broken the King's peace.

Towards the end of the middle ages, however the institution of compensation began to
lose its force, due to the simultaneous growth of Royal and Ecclesiastical power which
had a sharp distinction between torts and crimes. The demand for compensation for the
victims of crimes was revived during the Penal reforms movement of the 19\textsuperscript{th} Century.
Some penal philosophers strongly advocated for compensation and restitution to the
victim. Bonnevill\textsuperscript{e} stressed on "public responsibility" to the victim. Lombroso\textsuperscript{3} supported
the idea of victim compensation and recommended that the victim of a crime should be
properly compensated for injury. He recognised the difficulties in administering such a
proposal, but his idea was that "the victim should be legally entitled to receive a part of
the proceeds from work done by culprit during detention". Garofalo\textsuperscript{4} supported the idea
of "enforced reparation". He thought, the damages are to be assessed in sufficient amount
not only adequate for complete indemnification of the injured party but to cover the
expenses incurred by the state as a result of the offender's dereliction. If the offender’s
means are inadequate his labour must be devoted to the required reparation. At the First
Congress of Criminal Anthropology in Rome (1885), a resolution was passed which

\textsuperscript{2} Hugh D: Barlow, Introduction to Criminology (1970), p. 453
\textsuperscript{3} "Cesare Lombroso" in Mannheim, Pioneers, p.279
\textsuperscript{4} "Raffaele Garofalo" in Manneheim, Pioneers, p.331
essentially followed the suggestion of Garofalo. The Third International Juridical Congress at Florence (1891) also recommended the institution of a "Compensation Fund". Some western countries such as New Zealand (1963), Great Britain (1964), and U.S.A. (California, 1965) introduced a type of state sponsored compensation programme in their criminal justice system at least for crimes of personal violence.\(^5\)

**Compensatory Jurisprudence in India**

Various Reports of Law Commission of India as well of Committees on Reforms of Criminal Justice administration have played a pivotal role in developing compensatory jurisprudence in India. 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 deliberated upon the issue of justice to victims of crime and has also suggested some proposals for reform. The Malimath Committee (2003) on Reforms of Criminal Justice System in India has also laid emphasis on the participation of victims in the criminal justice processes and has advocated for compensation and restitution of the victims.

In July 2009 the law commission\(^6\) submitted its report to the Hon’ble Supreme Court of India for its consideration in the pending proceedings filed by one Laxmi in W.P. (Crl.) No. 129 of 2006 on “the Inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a law for Compensation for Victims of Crime.” Law commission recommended that a separate Act should be proposed for dealing with compensation to victims of acid attacks, rape, sexual assault, kidnapping etc. It suggested a broader legislation so that it can deal with the problems of victims of different crimes who need rehabilitation and compensation for survival.

**Legislative Enactments Regarding Compensation in India**

There is no comprehensive legislation providing for compensation by the State or by the offender to the victims of crime. The *Criminal Procedure Code is the first and may be the oldest legislation in* India to deal with the subject of compensation to the victims of

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\(^6\) 226\(^{th}\) Report of Law Commission, July 2009, Recommendation Regarding Compensation under Indian Penal Code, 1860
crime. The provisions of Criminal Procedure Code concerning victim compensation occupy a prominent place in the progressive development of the law relating to victim compensation through judicial approach.


Section 357 of the Criminal Procedure Code, 1973 enables the passing of an order of compensation by the trial Court, the Appellate Court and the High Court or Court of Session in revision at the time of passing of judgment, out of fine imposed by the Court under the following circumstances:

Firstly, (a) to the complainant, for meeting expenses properly incurred in the prosecution; (b) to a person, who has suffered loss or injury by the offender, when he can recover compensation in Civil Court; (c) to a person entitled to recover damages under the Fatal Accidents Act, when there is a conviction for causing death or abetment thereof; (d) to a bona fide purchaser of property, which has become the subject of theft, criminal misappropriation, criminal breach of trust, cheating, or receiving or disposing of stolen property and which is ordered to be restored to its rightful owner.

Secondly, where there is an appeal against any sentence or fine, no compensation shall be paid till the appeal period lapses.

Thirdly, in all cases where no fine is imposed, the Court may order the payment of compensation to the victims of crime who have suffered any loss or injury.

Whenever compensation is paid under Section 357 it shall be taken into account by any Civil Court which subsequently takes up the civil suit claiming compensation. Section 357 visualizes a wide range of situations under which compensation may be ordered to be paid to the victims of crime. Under the section, the categories of victims which become entitled to claim compensation are the complainant victim or any person who has suffered loss or injury because of the offence. He can recover compensation in Civil Courts under the Fatal Accidents Act, 1855 and when there is a conviction causing death or abetment thereof or a bona fide purchaser of property, etc. can claim compensation.

But this Section 357 of Code of Criminal Procedure does not provide interim or immediate compensation to the victim on motor accidents claim cases.
Considering Section 357, sub-section (1) of the Code empowers a Criminal Court to award the whole or any portion of the fine recovered for the purposes mentioned in clauses (a) to (d). Further clauses (a) and (d) in essence, deal with defraying pecuniary losses incurred by a person in prosecution \(^7\) and by a bona fide purchaser of stolen goods, respectively. Clause (b) and clause (c), on the other hand, respectively deals with re-compensating 'any loss' (pecuniary or otherwise) or injury caused by any offence \(^8\) and by death.__

In order to claim compensation under clause (b) it is necessary to show that person suffered a loss. 'Loss' means that can be compensated in money including some substantial detriment from a worldly point of view and loss of support and even loss of mere gratuitous liberty while the word 'injury' has been given a very wide meaning and connection in Indian Penal Code, 1860.

The compensation under this section not only corresponds to damages awarded in civil proceedings but is also to be taken into consideration by a Civil Court in determining the quantum of damages in a subsequent civil suit relating to the same matter.

Further, sub-section (3) was inserted in Section 357 of the Code of Criminal Procedure, in 1973, unlike sub-section (1), empowers a Criminal Court, in its discretion, to order the accused to pay by way of compensation a specified amount to victims of the offence even if fine does not form part of the sentence imposed on him.

Keeping this in view, Section 357(3) of Criminal Procedure Code has not only recognized the philosophy of the compensation simplicitor to the victims of crime even in the situation where no sentence of fine has been imposed but it also added a new dimension to the idea of re-compensating them. Prior to inclusion of this clause no compensation could be awarded unless a substantive sentence of fine was passed and then too this was limited only to the extent of the fine actually realized. So it can be for any amount and not limited to the amount of fine imposed or recovered.

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\(^7\) See, Code of Criminal Procedure, 1973, Section 359 also empowers a Court, in its discretion to order a convict in addition the penalty imposed upon him, to pay reasonable costs, in whole or in part, incurred by the complainant in prosecution of a non-cognizable offence.

\(^8\) Ibid; Sec. 358 also empowers a Magistrate; in his discretion to award a compensation, not exceeding Rs. 1000 (subs. by Act 25 of 2005, w.e.f. 23-6-2006) to an accused from a complainant for loss of time and expenses incurred on account of being groundlessly arrested at the instance of the complainant.
Section 358 visualizes when any person has been caused to be arrested by the police, at the instigation of a person and the Magistrate finds that such arrest was caused on insufficient grounds, than he may order a sum of rupees not exceeding one thousand\(^9\) to be paid to the victim of such arrest. In these instances the State is to proceed against the erring officials and release the amount awarded as compensation.

Further, it is pertinent to note that Section 358 obviously aims at protecting the constitutionally guaranteed personal liberty of the person under Article 21 of the Constitution of India and also save them from illegal and arbitrary arrest, even without reference to any accusations or charge leveled against such person. Thus, this is definitely, important piece of legislation against groundless arrest by the police which upholds the rule of law by having democratic values.\(^{10}\)

Under Section 359 of the Code when any person has been convicted in non-cognizable case the Court may order for the refund of expenses incurred by the complaint in launching the prosecution. So under Section 359, the complaint victim is entitled to claim only the expenses incurred in the launching of the prosecution for loss or injury suffered by him.

Section 250 of the Code lays down special provision for the payment of compensation to the accused person in cases where he is discharged or acquitted as a result of finding no reasonable ground existing for launching such prosecution. Section 250 of the Code of Criminal Procedure, thus, covers only those specific cases where case has been instituted upon a complainant or upon the information given to police or to the Magistrate accusing some person of having committed certain act or offence triable by a Magistrate and the case should have been ended in an acquittal when the Magistrate trying the case should have found that complaint or the information given was false and either frivolous then the Magistrate may order the informant to pay compensation.

Further, Section 237 of the Code lays down that the Court of Session taking cognizance of an offence under sub-section (2) of Section 199 shall try the case in accordance with

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\(^9\) Subs. By act 25 of 2005, w.e.f. 23.6.2006, earlier it was 100 Rs. only

the procedure for the trial of warrant cases instituted otherwise than on a police report before a Court of Magistrate.

This Section lays down the provision of the payment of compensation to victims of crime by the Sessions Court in the cases involving the defamation of a person. The maximum amount of compensation that the Court may award under this Section is Rs. 1000/-.

Under Section 237 to award the compensation the accused must have been discharged or acquitted on the ground that no reasonable cause for making the acquisition against the accused exists.

It is clear from the observations that the Court is empowered to award compensation to the victim or his dependents out of the fine imposed upon the offender. After considering all the provisions of the Code it is clear that Section 357(3) confer wider powers on the Court to award compensation irrespective of the fine amount imposed. Further, it is clear from the above provision which at least visualize a minimum scheme of compensation, for the victims. If the provision of Section 357(3) is excluded then the purpose of the provision, become futile in case the offender is unable to pay the fine imposed. Therefore, in most of the cases, where compensation is awarded, it remains unreal.

In 2009 after section 357 of the principal Act, Section 357A has been inserted in Cr.P.C. providing for Victim Compensation Scheme.11

11 Inserted by act 5 of 2009, w.e.f. 31/12/2009 (incorporates recommendations of Law commission,152nd Report,1994) S.357A (1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.
Compensatory Jurisprudence and Violence Against Women

With offences like foeticide, infanticide, sexual harassment, cruelty, eve teasing, trafficking, molestation, dowry death and sexual assault, rape is also increasing everywhere including in traditional society like India. In the penal laws of all country, sexual offences against a women occupy a significant place and out of all the crimes, the one which shocks the conscience, and shakes its roots, and is the most heinous, is rape. Rape is the only crime, perhaps, where instead of getting sympathies, a victim is socially ostracized and morally degraded with a lifelong stigma on her dignity and character, the mental torture is deep and agony unbearable. The injury is physical as well as psychological to the victim. Rape involves defilement and dishonour not only of the victim but to the whole family. In such a state, the victim tries to get justice by appealing to the courts, holding the provisions of the penal laws close to her heart and hoping against hope that justice will be rendered to her.¹²

Judicial Attitude Towards Rape Victims

In our country, so far, courts too, have not been able to understand clearly the new trend emerging in the field of Victimology relating to the rights of victims of crime in general and in rape victims in particular. In Prem Chandra v State of Haryana ¹³ popularly known as Suman Rani case the Supreme Court reduced the punishment of police constable who raped her in the police station, on the ground that the victim was women of questionable character and easy virtue.

In another case Dayaram v State of M.P. ¹⁴ reduced the sentence on the ground that victim belong to non-aboriginal society and married after sometime of incidence. Though the effect of feminist movement in victimology as well as in criminal justice system is visible in western countries, but our judicial system do not seemed to get the

¹² Dr. Mamta Rao “Law Related To Women And Children”, p. 74
¹³ (1989)Supp. (I) SCC 286
¹⁴ (1992)CrLJ 1246(MP)
flavour of it. It is very perturbing to note the insensitive attitude of the judiciary in some of the cases where a woman’s prestige and honour has been ravished. In Raju v. State of Karnataka the Supreme Court reduced the sentence of both the accused from seven years rigorous imprisonment to three years rigorous imprisonment. The main reason out of others for reducing the sentence which was awarded by the trial court and confirmed by the high court was the circumstances under which this offence was committed. Shifting the blame on the victim for having trusted the accused in the time of trouble and going along with them to stay in a room of lodge during night. Strangely court could not appreciate these facts from the victim’s point of view. If a woman goes with any other person, it does not mean that she has consented for everything like sexual intercourse. Why the person concerned was not made liable for breach of trust and faith which was posed in him by that woman. Circumstances forcing a woman to trust some person and circumstances under which a woman just want to have company of some person for other considerations should be distinguished. By reducing the sentence only on this basis apex court of the country has shown gender bias of our judicial system. The objective of criminal law is to control the passion and preserve the moral standards. Hence in this case court erred in reducing the sentence of the accused.

In yet another case Pratap Mishra v. State of Orissa victim was a pregnant woman. She was raped in quick succession by three men and suffered miscarriage four or five days later. The trial court convicted the accused and their conviction was upheld by the Orissa high court. The character of the prosecutrix was considered even in the High Court as was not found to be legally wedded wife of the man with whom she was living. Despite that both trial court and high court convicted the three accused for the offence of rape. The Supreme Court took into consideration the role of victim in crime precipitation by saying that prosecutrix was not a lady of character and questioned why she did not make stiff resistance. The court also remarked that victim was a midwife, she knew that if any violence was caused to her it might lead to abortion. One cannot understand how

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15 1994 Cri. L.J. 248
16 AIR 1977 SC 1307
these two observations can be held consistent and how a victim who knew the result of her resistance could be expected to resist.

In Tukaram v. State of Maharashtra commonly known as Mathura case the court again took into consideration the role of victim and acquitted the accused. However, this decision initiated the movement towards the change in rape laws.

*These judgments show the patriarchal mentality of judges*, ignorance of the court about the new trend emerging in the field of Victimology and due to lack of clear legal provision regarding compensation to rape victim.

*But some of the judgments contain a ray of hope also where sympathetic view has been taken towards the rape victim and ameliorative steps have been taken to compensate the victim.*

In the case of State of Punjab v Gurmit Singh, the court observed that “*Of late crime against women in general and rape in particular is on the increase….. Rape is not merely a physical assault. It is often destructive of the whole personality of the victim. A murder destroys the physical body of the victim, a rapist degrades the very soul of the helpless female. The court, therefore, shoulder a greater responsibility while trying an accused on charges of rape*”.  
Justice V.R.Krishna Iyer in an article remarked that ”*a rapist must pay dearly by way of reparation. He must be made to work in the jail, paid wages and made to part with a large part of it to the victim of his crime. The rapee must be given protection and right to abortion, free of charge, under court direction*”

The case of Madan Gopal Kakkad v Naval Dubey and others once again faced the issue of choice sentence in an equally challenging context. In this case Supreme Court

17 AIR 1979 SC 185  
18 State of Punjab v Gurmit Singh (1996) 2 SCC  
20 (1992) SCC (Cri) 598
rightly convicted the accused for the offence of rape under section 376 of IPC instead of outraging the modesty of women under section 354 IPC, which formed the basis of High Court’s conviction making the following observation- “...though all sexual assaults on female children are not reported and do not come in light yet there is an alarming and shocking increase of sexual offences committed on children. This due to the reason that the children are ignorant of the act of the rape and are not able to offer resistance and become easy prey for the lusty brutes who display unscrupulous, deceitful and insidious art of luring female children and young girls. Therefore such offender who are menace to the civilized society should be mercilessly and inexorably punished in the severest term.” An English case *Every v. Miles* 21 also emphasized the moral responsibility of the offender to provide such compensation to the girl whose life prospects are ruined as the accused people can afford to pay was to be paid and in addition to the sentence.

In *Uttarakhand Sanghrash Samiti, Mussorie v. State of Uttar Pradesh and others* 22 compensation to victims of the women molested and raped, the court viewed the circumstances of these cases the same as in death and grievous hurt and held that of those women who were molested and subjected to rape each shall be entitled to receive compensation being the same as for victim of death.

In *Rupal Deo Bajaj v. K.P.Singh Gill* 23 keeping in view the total fact situation, the court held that the alleged act of Mr. Gill slapping Mrs. Bajaj on her bosom amounted to “outraging of her modesty” for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady, sexual overtones or not notwithstanding.

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21 1964 AC 261
22 [(1996)UPLBEC 461]AUHC
23 (1995) 6 SCC 194
In *State of Punjab v. Gurmit Singh*\(^{24}\) victim testimony was clear and without any infirmity, the conviction was upheld. The court advised the lower judiciary that even if the victim girl is shown to be habituated to sex the court should not describe her to be of loose character. Corroboration is not compulsory. Medical and chemical report did provide corroboration in this case. The matter was ten year old. In the mean time all the accused and the girl was married and settled and, therefore, the sentence of 5 year rigorous imprisonment and fine of Rs.5000/- was considered sufficient to meet the ends of justice.

In *Bodhisattwa v. Ms. Subdhra Chakroborty*\(^{25}\) the Supreme Court again observed that corroboration is not compulsory, the court ordered compensation to the victim and made following observation-

"Rape is a crime not only against the person of a woman; it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis....It is a crime against basic human rights and is violative of the victims most cherished right, namely, right to life, which includes right to live with human dignity contained in Article 21."

In *The Chairman, Railway Board and Others v. Mrs. Chandrima Das and Others.*\(^{26}\) the High Court had awarded a sum of Rs.10 lakhs as compensation for Smt. Hanuffa Khatoon as the High Court was of the opinion that the rape was committed at the building (Rail Yatri Niwas) belonging to the Railways and was perpetrated by the Railway employees. In the instant case, it is not a mere matter of violation of an ordinary right of a person but the violation of Fundamental Rights. Smt. Hanuffa Khatoon, who was not the citizen of this country but came here as a citizen of Bangladesh was, nevertheless, entitled to all the constitutional

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\(^{24}\) (1996) 3 SCC 384

\(^{25}\) (1996) 2 SCC 490

\(^{26}\) (2000) INSC 26 (28 January 2000) [www.commonlii.org](http://www.commonlii.org) accessed on 28/05/2009
rights available to a citizen so far as "Right to Life" was concerned. She was entitled to be treated with dignity and was also entitled to the protection of her person as guaranteed under Article 21 of the Constitution. As a national of another country, she could not be subjected to a treatment which was below dignity nor could she be subjected to physical violence at the hands of Govt. employees who outraged her modesty. The Right available to her under Article 21 was thus violated. Consequently, the State was under the Constitutional liability to pay compensation to her and secondly, on the ground of Human Rights Jurisprudence based on the Universal Declaration of Human Rights, 1948, which has the international recognition as the "Moral Code of Conduct" having been adopted by the General Assembly of the United Nations.

Compensation to rape victim- whether justified?

A noted lawyer Indira Jaising said that “...it is true, in our country, the jurisprudence of compensating a victim of crime (in case of rape), has not been well developed but it is well understood that compensation made for injury has no relation with conviction or sentence. The very essence of the criminal justice system is that it has to culminate in a prison sentence and in an offence like crime against women where it violates her right to life, it is immoral to make a trade – off by imposing a fine and thereby reduce the sentence."27

The essence of criminal jurisprudence is that it differentiates between a civil wrong and a criminal offence. While former is a breach of the contract between private parties, a criminal act has sufficient gravity where the state has interest in it. The right to life is not negotiable and a judgment like this will blur the disaster between the two. The criminal justice system was setup to give convictions, not compensation. On the other hand if compensation is allowed there may be possibility that rich can only buy the crime what they have committed. But is not true in all sense. Compensation to victim is for what she actually lost due to criminal act and for the expenses actually incurred.

27 Hindustan Times, Lucknow, August 24, 1997
Social activists have been fighting for a comprehensive rehabilitation package for rape victims. Brinda Karat of All India Democratic Association (AIDWA) said- “I would not call it a compensation but her right to her dues. Very often, the victim, especially if she is from poor background, which is often the case, incurs a lot of expenses by missing days of work. After a long protracted battle in court, what she get in the end? Nothing. There should no mortal judgments on accepting money. There has been a great debate at a decision by the Madhya Pradesh government to award compensation of Rs.10,000 to a rape victim for losing her ‘Honor’. What is most important is the perception of the victim what she thinks is necessary for her rehabilitation and the direction her life has to take. Ideally, court should not only confer imprisonment to the perpetrator of crime according to law but also include a strong rehabilitation package for the victim.”

**Scheme for Relief and Rehabilitation of Victims of Rape**

The Hon’ble Supreme Court in *Delhi Domestic Working Women’s Forum V. Union of India and others writ petition* had directed the National Commission for Women to evolve a “scheme so as to wipe out the tears of unfortunate victims of rape”. The Supreme Court observed that having regard to the Directive principles contained in the Article 38(1) of the Constitution, it was necessary to set up criminal Injuries Compensation Board, as rape victims besides the mental anguish, frequently incur substantial financial loss and in some cases are too traumatized to continue in employment. The Court further directed that compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries compensation board whether or not a conviction has taken place. The Board shall take into account the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurs as a result of rape. Accordingly, to give effect to the aforesaid direction of the Hon’ble Court, the National Commission for women sent a draft

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28 Hindustan Times, Lucknow, August 24, 1997
29 (1995) 1 SCC 14
scheme to the central government in 1995, thereafter the Committee of Secretaries under the Chairmanship of the Cabinet Secretary gave the following guidelines in this regard:

1. That a plan scheme would be prepared by the NCW/DWCD for disbursing compensation to the victims of rape and the scheme should also provide for interim compensation.

2. The quantum of compensation is to be worked out by the DWCD in consultation with the NCW.

3. Provision for budgetary requirements for the scheme, which would be transferred to the states as Grants-in-Aid.

4. Setting up of District level Committees headed by District Magistrate, to consider the claims.

5. Criminal Injuries Compensation Board to monitor the implementation of the scheme by the State Government and attending to any complaint received in this regard.

6. The MHA would issue suitable directives to state governments for directing the public prosecutors to plead before the competent court to award suitable compensation to the victims.

7. Monitoring of the scheme by the National Commission for women.

The NCW has redrafted the scheme in the light of the above guidelines and in formulating the scheme; the Commission is guided by the parameters given by the Supreme Court as well as its own assessment of the needs of the victims of rape.

**Need For Extensive Compensation Programme**

Social justice, being the goal of law in action, has been found under Indian constitution like a golden thread. But justice itself is truth in action. Ignorance is the enemy of this truth. Victim of crime being component of criminal administration are entitled to share the promise of social justice contained constitution. Under the Indian criminal justice system, offence is regarded as against the state. So the victim has to initiate separate suit to recover the damages
for the wrong that has been committed against her. Sec. 357 of Cr.P.C. though an important provision is applicable only when the accused is convicted and sentenced. But by amendment to Cr.P.C. plea bargaining has been introduced for the benefit of victims to recover compensation from the accused in certain cases with court permission. Offences punishable with more than three year of imprisonment and against child, state and women cannot be settled by compensation.

There are crimes that cannot be measured in term of monetary compensation especially in case of rape that affect the victim psychologically, socially and physically. These cannot be weighed to sufficiently avenged but to consider such means one can never draw the line. In case of rape, the trauma under which the victim suffer become endless from very start of offence to the reporting to police and until the case is being decided but all is not, she has to suffer in society, workplace and even to her marital relation also. Due to victimization she is left in such condition where there may be chance of repeated several abuse. It is true that money cannot repair the chastity and purity which is precious asset of the Indian women, nevertheless if sufficient compensation, assistance and rehabilitation is granted to her, she could not have to depend on the mercy of anybody. Therefore crime against women, mandatory compensation, assistance and rehabilitation programmes must be formulated.

Supreme court judgment in *Rupaldeo Bajaj v K.P.S. Gill*\(^30\) case is desirable and timely move to fix liability of offender and giving monetary relief to victim. This decision is likely to give impetus to the reporting of cases of rape, molestation and outraging modesty, which almost go unreported.

In human society based on relationship, the setup of criminal justice demands means to satisfy the victim loss. Though, money cannot buy back the lost

\(^30\) (1995) 6 SCC 194
happiness but financial redress is a better and more rehabilitative process then imprisonment.

It is suggested that compensation should be made an alternative mode of punishment under the Indian Penal Code. It should be made mandatory in the case of rape and the quantum of compensation should be in accordance with the injury received by the victim. The remedy should be made interalia in the criminal justice system irrespective of the fact that a civil action could lie in the case. The other option is to create public fund for the purpose. An appeal may be made to the people and philanthropic societies to generously extend their cooperation in contributing money to organize such a fund. Crime against women must be properly compensated.

A National Criminal Relief And Rehabilitation Board should be established at the national level and State Relief And Rehabilitation Board at the state level should setup for compensation and assistance to the rape victims. National Commission for Women recommended the setting up of a rape fund for victims to look after expenses while the trial is on. While rich should be asked to pay compensation and if the culprit is poor, NCW should give the compensation from the fund.

Thus it can be concluded that the expanding universe of compassionate criminology must respond realistically to the new challenges of human rights and social justice as to salvage, solace and restitute victims of rape by resorting to new methodologies of reparative, compensatory, preventive and other administrative and judicial remedies. The victim of crime in general and rape in particular must claim our attention since injustice to them can be fully undone only by restitutive justice beyond punishment of the offender.

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