

Judicial Attitude towards Victim's Participation in Administration of Criminal Justice in India: An Analysis

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ABSTRACT:

Conflicts and crimes are as old as human societies themselves. However, the mankind has always been instrumental in finding the most effective ways to resolve conflicts or crime in the society. The advent of the criminal justice system was the consequence of similar efforts. The experiences in most countries of the world tell us that the formal system of criminal justice, due to various reasons, has not been fully successful in achieving its objectives. Mounting arrears in the court, delay in disposal of cases and consistently rising rate of acquittals resulted in the loss of public confidence in the system. This system of affairs in spite of providing justice to the victim creates hardship for those and in number of cases they suffered the loss of their lives or property or other type of harassment. As the whole world has become a global village at this time of technology, still in the administration of Criminal Justice victim's say is negligible. Prosecution story revolves around the accused and benefits of doubts are given to him. This results into the acquittal of accused for want of evidence. In such a situation a common man loses the faith on the whole system of administration of Justice. There is a need to balance the concerns of the victim and the community as well as to reintegrate the offender in the society. So, the victim's participation in administration of criminal justice for sentencing and rehabilitations of offenders is of paramount importance. As in the present age the criminal system of justice requires a tremendous change for the satisfaction of society, in the paper an effort is being made to analyse the role of judiciary in rendering the justice on victim perspective.

KEY WORDS:

Victims of crime, administration of criminal justice, assistance to crime, victims, victim justice, restitution, India, victimology

INTRODUCTION:

“Man is not made for law, but the law is for man. Law is a regulator of human conduct. No law works out smoothly unless the interaction is voluntary. An act is justified by the law if it is warranted, validated and made blameless by law.”

The above observation of Justice A.R. Lakshmanan seems to be justification that a legal system of a country should be approachable for all. The Constitution of India guarantees justice to all. Article 14 of the Indian Constitution guarantees equality before law and equal protection of Laws. Right to equality guaranteed under this Article also include in its ambit the equal opportunity afforded to every one for

access to justice. The term ‘access to justice’ means that the people in need of help, finding effective solutions available from justice systems which are accessible, affordable, comprehensible to ordinary people and which dispense justice fairly speedily and without discrimination, fear or favour and a greater rule of alternative means. If the law treats all persons equally irrespective of the prevalent inequalities, it will not fulfill the basic object lying behind Article 14 as well as the preamble of the constitution. Therefore, the Law must function in such a way that all the people have access to justice in spite of the economic disparities. Therefore, for a satisfactory access to justice the two-basic purpose of the legal system must be fulfilled.

- i. The system must be equally accessible to all.
- ii. It must lead to results that are individually and socially just.

In every civilized society the primary role of administration of criminal justice is to protect the member of that society. In this respect it is formal instrumentality authorized by the people of a nation to protect both their collective and individual rights. Since the crime and disorder disrupt peace and stability of a society, it becomes a major duty of administration of criminal justice to maintain the law and order. In order to achieve a fruitful result for maintenance of peace and stability in the society at the present age it is assumed that the criminal law need not to be applied as a retributive measures nor to be applied to procure absolutely deterrent, nor to achieve restitutive values, but these laws ought to be applied to correct the offender with a view to improving the conduct of the offenders who are capable to recovery with the intention of law and have a mind capable of receiving guidance for good behavior.¹

Generally the crime is considered as an offence against the State and so the offender has no say to settle the case amicably with the aggrieved party once he is arrested. Similarly the victim has also no say either to halt the proceeding or to negotiate with the offender. These cases are not handled by the parties themselves. These are the proceedings between the accused and the State (i.e. Prosecution). In some cases wherein a report is made by the victim there is no chance to reconcile with the offender unless the complainant revokes the police report. In that case he might lose his right in getting compensation that he possibly will get if the case is settled amicably.

In dealing with the criminal cases the right of the aggrieved party is normally neglected. For example, in case of theft, when the offender is convicted and sent to prison, he is not to ask to restore the stolen property or its value to the victim. Sometimes the convict is asked to pay fine .Such fines go to the government exchequer. In reality victim gets nothing. Only the convict is punished in one way or other. This system of affairs in fact creates unfairness and dissatisfaction on the part of the victim. At this juncture the restorative justice measures can lead to satisfaction for victim as well as to the prevention of future illicit behavior and can produce viable alternatives to short terms of imprisonment and fines.

INTERNATIONAL APPROACH:

It is a recognized fact that a crime often affects not only the future of victims and communities, but also those of the possible offenders involved. It seeks to restore all of the interests of all of the parties affected by a crime, to the extent possible using the active and voluntary competency and involvement of the offender, the victim and the communities². In brief, restorative justice not only is a source of

¹ . M.A. Ansari; *Tribal and Corrective Justice*, 1988, p32

² . Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10-17 April 2000: report prepared by the Secretariat (United Nations publication, Sales No. E.00.IV.8).

motivation, but also paves a way for the consideration of recommendation of U.N. Declarations which may not have the binding effect of a Covenant, but its clauses serve as a useful benchmark.

The General Assembly of the United Nations in its 96th plenary on November 29, 1985 had adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power constituted an important recognition of the need to set norms and minimum standards in International Law for the protection of victims of crime. The U.N. Declaration recognized four major components of the rights of victims of the crimes – access to justice for fear treatment,³ restitution,⁴ compensation⁵ and assistance⁶. United Nations Organization has further in its Declaration⁷ encouraged the “development of restorative justice policies, procedures and programmes that are respectful to the rights, needs and interests of victims, offenders, communities and all other parties”. In August 2002, the United Nations Economic and Social Council adopted a resolution calling upon Member States to draw on a set of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters developed by an Expert Group⁸. Their purpose is to inform and encourage Member States to adopt and standardize restorative justice measures in the context of their legal systems, but there was no intention to make them mandatory or prescriptive. The core part of the *Basic Principles* deals with setting the parameters for the use of restorative justice and the measures that should be adopted by Member States to ensure that participants in restorative processes are protected by appropriate legal safeguards. In 2005, the declaration of the Eleventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (2005) urged Member States to recognize the importance of further developing restorative justice policies, procedures and programmes that include alternatives to prosecution.

CONSTITUTION OF INDIA AND VICTIMS OF CRIMES:

The Indian Constitution has several provisions which endorse the principle of victim compensation. The constellation of clauses dealing with Fundamental Rights⁹ and Directive Principles of State Policy¹⁰ laid the foundation for a new social order in which justice, social and economic, would flower in the national life of the country¹¹. Article 41, which has relevance to victimology in a wider perspective, mandates, *inter alia*, that the state shall make effective provision for “securing public assistance in cases of disablement and in other cases of undeserved want”. Surely, crime victims and other victimized people swim into the haven of Article 41. Article 51-A makes it a fundamental duty of every citizen of India “to protect and improve the natural environment and to have compassion for living creatures” and “to develop humanism”. If empathetically interpreted and imaginatively expanded, we find here the

³. Clause 4 of U.N. Declaration on *Declaration of Basic Principles on Justice for Victims of Crime and Abuse of Power*.

⁴. Clause 8 of the U.N. Declaration on *Declaration of Basic Principles on Justice for Victims of Crime and Abuse of Power*

⁵. Clause 12 of the U.N. Declaration on *Declaration of Basic Principles on Justice for Victims of Crime and Abuse of Power*

⁶. This includes “the necessary material, medical, psychological and social assistance through governmental, voluntary, community based and indigenous means.” Clause 14, Part B of the U.N. Declaration concerns the victims of abuse of power “that do not yet constitute violations of national criminal laws but of intentionally recognized norms relating to human rights.”

⁷. *The Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century*, 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10-17 April 2000

⁸. *The Bangkok Declaration—Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice*, 11th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Bangkok, 18-25 April 2005, para. 32.

⁹. Part III of the Constitution of India.

¹⁰. Part IV of the Constitution of India

¹¹. The Constitution of India, Article 38

constitutional beginnings of victimology¹². Further, the guarantee against unjustified deprivation of life and liberty¹³ has in it elements obligating the state to compensate victims of criminal violence¹⁴.

INDIAN CRIMINAL LAW AND RESTORATIVE APPROACHES:

Administration of justice is one of the important components of a civilized society. In order to maintain the peace and stability in the society the criminal justice system has to play a vital role.

As ours have a concept of welfare State, to provide an approachable judicial system is the prime duty of the State. Poverty, ignorance or social inequalities should not become barriers to it. Judiciary has to play a tremendous role in providing justice in Country like India, where majority of its population is considered as marginalized section. For a common man Court is the place where the justice is meted out to him. But actually the Courts have become inaccessible due to various barriers such as poverty, social and political backwardness, illiteracy, ignorance and above all the procedural technicalities etc. More over there is a wide gap or difference between the Law existing in the books and the law actually practiced. It would not be wrong in bluntly pointing out that laws are like cobwebs where the small flies are caught and the bigger ones easily break through. In theory the concept of rule of law is prevalent, but practically the idea of this concept is futile if the justice delivery mechanism cannot meet the needs of the time. The common man seems to have completely lost faith, trust and confidence in judicial wing due to the huge backlog of cases. It is not difficult to believe that a poor litigant would leave up the litigation, rather than running from pillar to post for getting justice. This pendency of cases in Indian courts is swelling up at an alarming rate. Administration of criminal justice is more difficult and technical for a common man. As the criminal justice system that has been adopted in India is modeled largely on the lines of retributive justice, the system indulges in an exercise of quantifying crime in terms of monetary and physical punishment. As a result the focus primarily is on the offender, disregarding the need of victim participation. For example, in case of theft, when the offender is convicted and sent to prison, he is not to ask to restore the stolen property or its value to the victim. Sometimes the convict is asked to pay fine. Such fines go to the government exchequer. In reality victim gets nothing. Only the convict is punished in one way or other. This system of affairs in fact creates unfairness and dissatisfaction on the part of the victim. At this juncture the restorative justice measures can lead to satisfaction for victim as well as to the prevention of future illicit behavior and can produce viable alternatives to short terms of imprisonment and fines.

As the basic object of criminal law is to protect society against criminals and law-breakers. For this purpose the law holds out threats of punishments to prospective lawbreakers as well as attempts to make the actual offenders suffer the prescribed punishments for their crimes. Therefore, criminal law, in its wider sense, consists of both the substantive criminal law and the procedural (or adjective) criminal law. Substantive criminal law defines offences and prescribes punishments for the same, while the procedural law administers the substantive law. Therefore the two main statutes which deal with administration of criminal cases in our country are criminal procedure code i.e. Cr.P.C and Indian penal code i.e. IPC being procedural and substantive respectively.

¹² . Krishna Iyer, 1999

¹³ . The Constitution of India, Article 21

¹⁴ . Basu, 2003

The procedure of administration of criminal justice in our country is divided into three stages namely investigation, inquiry and trial. Therefore for a dispute to be resolved the said case has to go through the three stages i.e. inquiry investigation and trial and after this process is completed the judgment of the court is passed by the judge who decides the case and its outcome. Although the said process appears to simple and plain on paper but in practicality is cumbersome and time consuming which is defeating the main essence of a criminal system i.e. fair and expeditious justice in procedural technicalities remain merely a hope for the victims, whereas such system indirectly help the offender in acquittal due to the lack of evidences. Moreover, the victim of crime feel increasingly frustrated and alienated as the Indian criminal justice system represents prosecution by the State. The role of victim of a crime here, which follows the common law colonial tradition, hence is restricted to that of a witness in the prosecution of an offence. This put negative impression on the victim of a crime who has suffered harm which includes physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights. Resultantly a number of victims prefer to leave their case unreported.

The present criminal justice system is based on the assumption that the claims of a victim of crime are sufficiently satisfied by the conviction of the perpetrator.¹⁵ There is undoubtedly a need to have new laws and institutions for the incorporation of restorative justice. A beginning had been made under the existing provisions of The Criminal Procedure Code, 1973 (Cr.P.C). The Committee¹⁶ on Reforms of Criminal Justice System perceived that “*justice to victims*” is one of the fundamental imperatives of criminal law in India and it suggests a holistic justice system for the victims by allowing, among other things, participation in criminal proceedings as also compensation for any loss or injury. In pursuance of the recommendation of the Law Commission¹⁷ a provision was made for the victims of crime that has been provided in Section 357 of the CrPC. This provision states “Court may award compensation to victims of crime at the time of passing of the judgment, if it considers it appropriate in a particular case, in the interest of justice”.

Under this Section¹⁸ Courts are empowered to impose a fine on the offender and the amount of compensation is limited to the amount of the fine. Such fine can be imposed only on four grounds: (1) defraying pecuniary losses incurred by the person in prosecution, (2) by a bona-fide purchaser of stolen goods, or (3) for loss or caused by injury or death, or (4) if the victim has suffered loss or injury caused by the offence.

However, Section 357(3) empowers the Court to award compensation for loss or injury suffered by a person, even in cases where fine does not form a part of the sentence. It is left to the discretion of the court to decide the amount of compensation, depending on the facts and circumstances of each case.

For instance, the compounding of offences under Section 320 of the Code has been provided in an effort to incorporate restorative justice into the prevailing system¹⁹. Under this provision, the victim may opt to

¹⁵ . K.D. Gaur, *Justice to Victims of Crime: A Human Rights Approach*, in CRIMINAL JUSTICE: A HUMAN RIGHTS PERSPECTIVE OF THE CRIMINAL JUSTICE PROCESS IN INDIA 351 (2004).

¹⁶ .Justice Dr. V.S. Malimath Committee constituted by the Ministry of Home Affairs on Reforms of Criminal Justice System in India, 2003

¹⁷ Law Commission of India 41 Report, (1969)

¹⁸ Section 357 Subsection (1) of Cr.P.C.

¹⁹ . Under Section 320 of The Indian Penal Code (1860), the offences that may be compounded have been listed along with the persons by whom they may be so compounded. The section makes a distinction between offences for the composition of which, the permission of the Court is to be sought [Section 320(2)] and those for which such permission is not necessary [Section 320(1)].

compound the case, thus providing an opportunity for the victim to affect a compromise or to mediate with the accused. This ostensibly brings the victim to the forefront. Though, it is required that the Court be satisfied with the terms of the proposed compromise or mediation, there is no guarantee that this will in fact be effectuated. That is to say, the compounding of offences need not necessarily result in mediation at all, and the victim may be left bereft of a remedy. This is particularly due to the fact that the victim and the offender are often not placed on an equal footing, with coercion and corruption being rampant. This renders the entire exercise a mere means to dispose off cases in the name of restorative justice, the result of composition being acquittal. With regard to victim compensation, Section 357 of the Cr.P.C provides for compensation that may be awarded, irrespective of whether the offence is punishable with fine and whether the fine is actually imposed²⁰. This payment by the offender to the victim as a consequence of the court's order may be viewed as a form of restitution. However, the above stated provision is invoked sparingly and inconsistency by the courts, due to a variety of reasons such as lack of awareness and indifference on the part of the judiciary.

As a progressive step, the Malimath Committee Report²¹, has advocated the rights of the victim. It mentions the need to formulate a witness protection programmes²², reclassify offences²³, and involve the victim in all stages of the trial²⁴. Another notable issue addressed by the Report is that of compensation to victims.²⁵ However, the Report does not empower the victim outside of the retributive system. Although the Report remains silent on issues such as restorative justice, the Committee has recommended that the offence of cruelty under Section 498A of The Indian Penal Code, 1860 ("IPC") be made compoundable and bail able in order to facilitate mediation between the wife and the husband²⁶. On the recommendation of Malimath Committee the Indian criminal procedure law has been amended²⁷ to introduce a new concept of plea bargaining. The introduction of this concept in Indian criminal justice system is largely a response to the deplorable status quo, reflected in the delay in disposal of criminal cases and appeals, the huge arrears of cases and the appalling of plight of under trial prisoners in jails. The newly introduced chapter XXI (A) in the Criminal Procedure Code lays down a procedure with a distinct feature of enabling an accused to file an application for plea bargaining in the Court where the trial is pending.

JUDICIAL RESPONSE TOWARDS VICTIM JUSTICE:

In Indian set up of Government judiciary plays a significant role in the administration of justice. Normally the function of judiciary is to interpret the laws enacted by the legislatures, but in actual practice it came various times in rescue of aggrieved and laid down guidelines for policy matters. With the frequent changes in social system the judiciary has changed its mind bent and it interprets the laws with the need of the society. Rehabilitation of victim by its involvement in the administration of criminal

²⁰ . Under Section 357(1) of the CrPC when the Court imposes a sentence of fine or, one of which a fine forms a part, the Court may order that the whole or any part of it may be paid as compensation to the victims in certain circumstances. In addition, sub-section (3) of Section 357 provides that the Court

may order the payment of such compensation even in the imposition of a sentence of which fine does not form a part.

²¹ . Report of the Committee on Reforms of Criminal Justice System, Vol. 1, Government of India, Ministry of Home Affairs, at 75 - 78 (2003).

²² . Id.at p. 284

²³ . Id. at pp. 181,289

²⁴ . Id. at pp.75-89

²⁵ . Id. at pp.80-81

²⁶ . Id. at pp.191,290-291

²⁷ . The Criminal Law (Amendment) Act,2005.

justice system or by compensation is a matter of great concern and judiciary in India is actively supporting victimology.

The first landmark judgment where compensation to the victim ordered by the Madras High Court and upheld with some modifications by the Supreme Court of India was *PalaniappaGounderv. State of Tamil Nadu*²⁸. In this case, the High Court after commuting the sentence of death on the accused to one of life imprisonment, imposed a fine of Rs.20,000 on the appellant and directed that out of the fine, a sum of Rs.15,000 should be paid to the son and daughters of the deceased under Section 357 (1) (c) of the Code of Criminal Procedure, 1973. The Supreme Court while examining the special leave petition of the appellant observed that there can be no doubt that for the offence of murder, courts have the power to impose a sentence of fine under Section 302 of the IPC but the High Court has put the “cart before the horse” in leaving the propriety of fine to depend upon the amount of compensation. The court further observed, “the first concern of the court, after recording an order of conviction, ought to determine the proper sentence to pass. The sentence must be proportionate to the nature of the offence and sentence including the sentence of fine must not be unduly excessive.” In fact, the primary object of imposing a fine is not to ensure that the offender will undergo the sentence in default of payment of fine but to see that the fine is realized, which can happen only when the fine is not unduly excessive having regard to all the circumstances of the case, including the means of the offender. The Supreme Court thus reduced the fine amount from Rs.20,000 to a sum of Rs.3,000 and directed that the amount recovered shall be paid to the son and daughters of the deceased who had filed the petition in the High Court. This is a case wherein the Supreme Court reduced the amount of fine and achieved a proper blending of offender rehabilitation and victim compensation. The important point, which emerged in the case, was the Supreme Court upholding the order of compensation. In the case of *Sarwan Singh v. State of Punjab*²⁹, the Supreme Court not only reiterated its previous standpoint but also laid down, in an exhaustive manner, points to be taken into account while imposing fine or compensation. The Honorable Court observed that while awarding compensation, it is necessary for the court to decide whether the case is fit enough to award compensation. If the case is found fit for compensation, then the capacity of the accused to pay the fixed amount has to be determined. And the court also observed that; “It is the duty of the court to take into account the nature of the crime, the injury suffered, the justness of the claim for compensation, the capacity of the accused to pay and other relevant circumstances in fixing the amount of fine or compensation. After consideration of all facts of the case, we feel that in addition to the sentence of 5 years rigorous imprisonment, a fine of Rs. 3,500 on each of the accused under Section 304 (1), IPC should be imposed”³⁰. In *Guruswamy v. State of Tamil Nadu*³¹, the accused was convicted on a charge of murder. The victims were his father and brother. While reducing the sentences, the Supreme Court held that the offence was committed during a family quarrel and though the victims are the father and brother of the appellant, in the circumstances of the case, the extreme penalty was not called for. The accused had also been under sentence of death for a period of six years. But in reducing the death sentence to imprisonment for life, it was held that the widow and her minor children should be compensated for the loss they have suffered by the death of the second deceased. The court imposed a fine of Rs.10,000 to the appellant and ordered the same to be paid as compensation to the dependents of

²⁸ . AIR 1977 SC 1323

²⁹ . AIR 1978 SC 1525

³⁰ .Ibid

³¹ . 1979 Cr LJ 704 SC

the victim. The case of *Hari Krishnan and the State of Haryana v. Sukhbir Singh and others*³² is the most important case after *Sarwan Singh*³³ where the court repeated its firm understanding once again in the following words: The power under Section 357 Criminal Procedure Code is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is, to some extent, a recompensatory measure to rehabilitate to an extent the beleaguered victims of the crime, a modern constructive approach to crime, a step forward in our criminal justice system. The payment by way of compensation must, however, be reasonable. What is reasonable may depend upon the facts and circumstances of each case. In *Rachhpal Singh v. State of Punjab*³⁴ on a civil dispute pending between the deceased and the appellant, the deceased obtained an interim order. This in turn led to a fight between the deceased and the appellants. The first appellant armed with a gun and the second appellant armed with a rifle along with three other accused attacked the deceased. The first and second appellant fired shots at the two deceased and they received two bullet injuries each and died on the spot. The Sessions Judge after considering the materials placed before him, found the appellants guilty and convicted and sentenced the first two appellants to death for an offence under Section 302 IPC and the other accused to life imprisonment. They were also sentenced to varying terms of imprisonment with fine with regard to other offences. Against this order the accused preferred an appeal challenging the convictions and sentences. The complainant separately preferred a Criminal Revision Petition praying for compensation under Section 357 CrPC. The High Court concurred with the findings of the Sessions Court on the conviction imposed but held that the imposition of capital punishment was uncalled for as the case was not one of the rarest of rare case and hence their sentence was reduced to imprisonment for life. With regard to the other three accused, they were acquitted under Section 302 read with 148 IPC. However, the conviction under Section 449 IPC was maintained but the period of sentence was reduced to the period undergone. Considering the revision petition, the High Court held that it was a fit case for exercising the jurisdiction under Section 357 CrPC and directed each of the appellant to pay a sum of Rs. 2,00,000, totaling Rs. 4,00,000 and in default, was to undergo a sentence of five years rigorous imprisonment. Against this order the appellants filed an appeal before the apex court. The Court after hearing the learned counsels, held that there was no ground to differ from the reasoning of the court below and upheld the conviction and sentence. With regard to the award of compensation under Section 357, the Court held that the High Court in the instant case did not have sufficient material before it to correctly assess the capacity of the accused to pay compensation but keeping the object of the Section, it is a fit case in which the court was justified in invoking Section 357. The court after having gone through the records and materials found that the appellants were reasonably affluent. Hence, the appellants were capable of paying at least Rs.1,00,000 per head as compensation. Therefore, the order of the High Court is modified by reducing the compensation payable from Rs.2,00,000 each to Rs.1,00,000 each.

Further the Supreme Court in *Mangilal v. State of Madhya Pradesh*³⁵ held that the power of the court to award compensation to the victims under Section 357 is not ancillary to other sentences but in addition thereto. The basic difference between subsection (1) and (3) of the Section 357 is that in the former case, the imposition of fine is the basic and essential requirement, while in the latter even the absence thereof

³² . AIR 1988 SC 2127

³³ .Sarwan Singh v. State of Punjab, AIR 1978 SC 1525

³⁴ . 2002 Cr LJ 3540 Pb.

³⁵ . AIR 2004 SC 1280

empowers the court to direct payment of compensation. Such power is available to be exercised by an appellate court, the High Court or the Court of Sessions when exercising revisional powers.

In *Bipin Bihari v. State of Madhya Pradesh*³⁶ The facts of the present case is that the complainant while grazing his ox in his field heard his sister-in-law's cry and rushed towards her. He found that the appellant had entered into an altercation with his sister-in-law and restrained her from cutting the crop. The appellant was carrying a gun and threatened of dire consequences. Despite the threat, the complainant tried to get hold of the gun and in the scuffle the appellant threatened to kill him. He fired a shot which struck on the right calf of the complainant and as a result the flesh was ripped off. Further, the appellant tried to load the gun again but was not able to do so as the complainant was grappling with him. At this point of time, some persons arrived on the spot and on seeing them the appellant fled from the scene leaving the gun. The incident was reported and charge was framed under Section 307 IPC against the appellant. The trial court convicted the appellant under Section 307 IPC and sentenced him to undergo rigorous imprisonment for life and pay a fine of Rs. 5000 in default of which he was to undergo two years of simple imprisonment. The trial court directed that the fine amount be paid to the complainant as compensation under Section 357, Criminal Procedure Code. The appellant preferred an appeal against this order in the High Court. The court after hearing the learned counsels held that it was not justified to impose sentence of life imprisonment on the appellant. Further, it was held that it would be proper to impose two years rigorous imprisonment. Regarding the award of compensation, the court referred to the case of *Bhaskaranv. Sankaran Vaidhyan Balan*³⁷, in which the apex court while considering the scope of Section 357(3) CrPC laid down that the Magistrate cannot restrict itself in awarding compensation under Section 357(3), since there is no limit in sub-section (3) and therefore the Magistrate can award any sum of compensation. Further, it was also held that while fixing the quantum of compensation, the Magistrate should consider what would be the reasonable amount of compensation payable to the complainant. In *Hari Krishnan and the State of Haryana v. Sukbir Singh and others*³⁸, the court held "that the power of imposing fine intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as reconciling the victim with the off ender. It is to some extent a constructive approach to crime and a step forward in a criminal justice system. It is because of this that it was recommended that all criminal courts should exercise this power liberally so as to meet the ends of justice, by cautioning that the amount of compensation to be awarded must be reasonable". The court held that "in order that collective may not lose faith in criminal adjudication system and the concept of deterrence is not kept at a remote corner we are disposed to enhance the amount of compensation to Rs.30000/-". The court referred to the case of *Sarup Singh v. State of Haryana*³⁹, wherein the apex court while reducing the sentence for the period already undergone by the accused under Section 304 IPC, directed to pay a sum of Rs. 20000 by way of compensation. The court further emphasized that the amount of compensation was enhanced taking into consideration the gravity of the injury, the strata to which the accused belongs, the milieu in which the crime has taken place and further keeping in view the cry of the society for the victims at large. The entire amount shall be paid to the injured on proper identification. The amount shall be deposited before the trial court within four months failing which the appellant shall have to undergo

³⁶ . 2005 Cr LJ 2048 MP

³⁷ . AIR 1999 SC 3762

³⁸ . AIR 1988 SC 2127

³⁹ . AIR 1995 SC 2452

further rigorous imprisonment of four years. The sentence of conviction of the appellant under Section 307 IPC is maintained with modification in the sentence.

*In Manjappav. State of Karnataka*⁴⁰ In this case, the appellant–accused had voluntarily caused simple hurt to the complainant. The appellant was also said to have assaulted the complainant with a stone resulting in grievous injuries to the complainant. Moreover, the appellant–accused intentionally insulted the complainant by using abusive language thereby provoking him, knowing fully well that such provocation would make the complainant to break public peace or to commit other offences. The charge was framed against the accused for offences punishable under Sections 323, 325 and 504 of the IPC. The trial court, after appreciating the prosecution evidence, by its judgment, dated 8 March 1999 held that it was proved by the prosecution that the accused caused simple as well as grievous injury to the complainant, and thereby, he had committed offences punishable under Sections 323 and 325 IPC. However, regarding the third charge—that the accused committed an offence punishable under Section 504 IPC—according to the court, the prosecution was not able to establish it and the accused was ordered to be acquitted. So far as sentence was concerned, the trial court awarded simple imprisonment for three months and a fine of Rs. 500, in default to undergo simple imprisonment for fifteen days for the offence punishable under Section 323 IPC. He was also ordered simple imprisonment for one year and fine of Rs. 3000, in default to undergo simple imprisonment for three months for the offence punishable under Section 325 IPC. The court also ordered that out of the fine amount so received, the injured-complainant will be paid compensation of Rs. 2000 under Section 357(1) (b) of the CrPC., 1973. Against this order of conviction and sentence, the appellant preferred an appeal in the court of Sessions Judge. The Sessions Judge, after considering the evidence and hearing the arguments, acquitted the appellant for the offence punishable under Section 323 IPC and set aside the order of conviction and sentence. He, however, confirmed the order of conviction of the accused for the offence punishable under Section 325 IPC. The appellate court, however, was of the view that it was a fit case to reduce sentence of simple imprisonment from one year to six months. The appellate court also directed the accused to pay compensation of Rs. 3000 to the complainant who had sustained grievous injuries, independently of what the trial court awarded. The sentence of fine and compensation passed by the trial court was confirmed. The appellant filed a revision petition in the High Court challenging the order of the Court of Sessions. The High Court confirmed the order of conviction. The High Court also partly allowed the revision by reducing sentence and ordering the appellant to undergo simple imprisonment for one month and to pay a fine of Rs. 1000 in addition to what was ordered by the courts below. The appellant then approached the Supreme Court against the order passed by the High Court. The Honorable Judges of the Supreme Court in their order stated that “keeping in view all the facts and circumstances, in our opinion, ends of justice would be met, if we order that the substantive sentence which the appellant has already undergone is held sufficient. We are also of the view that it would be appropriate if over and above the amount which the appellant herein has paid towards fine and also towards compensation to the injured victim, the appellant is ordered to pay an additional amount of Rs.10000/- to the complainant by way of compensation.” An analysis of the above case laws gives an indication that the courts in India, at least at the higher level, have started realizing the importance of the victim and the necessity to ameliorate the plight of the victim to the extent possible by restitution.

⁴⁰ . 2007 SCCL COM 599

CONCLUSION:

The preamble to the constitution of India promises to secure socio-economic and political justice and equality of status and of opportunity to all the citizens. Art. 39-A contains a directive principle which holds that the state will ensure that the legal system operates in a manner so as to promote justice to all and to ensure that no citizen is denied the opportunities of securing justice by reason of economic or any other disability. But the ground reality is that the law hardly reaches the vulnerable sections of the society where majority of the people are illiterate, rustic and rural and are ignorant about existence of their legal rights and remedies. And those who are aware of their right find it difficult to get them translated into reality because of the legal and procedural ordeals on has to undergo in the process of litigation. In order to achieve the goal of the constitutional provisions which are based on the idea of a welfare State it is necessary to opt the alternative means for the settlement of Disputes. The restorative means in the settlement of criminal cases could prove a viable means for restoring the faith of a common man on the justice delivery system and for the rehabilitation of victim. It is, therefore, the optimum participation of victim in the justice system would ensure satisfactory result.