

Compensation and Rehabilitation of Victims of Rape

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Abstract:

Women are important segment of the society, be it family or the government or any other sector like medical, education, administration or legal etc. Women are playing increasingly important roles in every walk of public life. Despite playing such vital role in societal progress, the women are not getting the respect due to them. Even today, majority of the country is male dominated and women have to do every act according to men. Violence and discrimination against women is common place on world. One of the most heinous crimes against women- is the act of non-consensual coercive sexual intercourse with a woman. It violates, not only the body and conscience of the victim, but also disturbs the social order. A victim of rape suffers several problems like, social stigma in addition to psychological trauma. However till today there is no efficient law to provide a compensation or rehabilitation of victims of rape in India. Moreover there are several countries which provide a proper remedy to victims. Rape is the offence which occurred in every country instead of advanced or backward, the difference is only the ratio. In this paper I will discuss the women's movement and major legislative provisions throughout the world towards compensation and rehabilitation of Rape Victims. As well as the Indian position in the particular offence.

Keywords: Rape, Judicial, Psychological, Victimology, Compensation, Offence

Introduction:

In ancient times also, the offender was required to reimburse the victim or his family for the loss, which he has caused as a result of offence. But now the state started to assume more functions. It played prominent role in investigations and prosecution of offences, a division between civil and criminal law emerged and victim's right to compensation was incorporated into civil law. Compensation is the act or state of compensating, as by rewarding someone for service or by making up for someone's loss, damage, or injury by giving the injured party an appropriate benefit. It can be in form of money, or other. Rehabilitation means to restore the condition of a person, which he/she has lost in accident, rehabilitation is a new approach in rape cases. History reveals that the term rape, in its modern sense, as the violation of a woman's body and honour without her consent¹, has existed in ancient times also. It was rather an intricate aspect of property. Ancient Roman law gives evidence that there were direct ties between law, property and person. If a woman was abducted and sexually molested even violently, the crime was not against the woman, but it was treated as merely a theft of a woman against the consent of

¹ Hari Singh Gour, *Penal Law of India* 2009 Vol. 3, Law Publisher, 7th Edition, p 1843.

her guardian or those who had legal power over her. The harm was treated as a wrong against the father or husband. But today the scenario has changed, now women are not treated as the property of anyone. Women have their separate identity. If any crime has committed against any women, she has legal right to sue the accused directly.² 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 women; nevertheless if sufficient compensation, assistance and rehabilitation are granted to her, she can start a dignified life as she lived before the offence.

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 money³ could be paid in lieu of pursuing the blood-feud, though 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.

Compensation and Rehabilitation in International Perspective-

The right to compensation and rehabilitation of victim is recognized even at international level. Universal declaration of human rights states that, “everyone has the rights to an effective remedy by the competent national tribunal for the acts violating the fundamental rights granted by the constitution or by the law.

USA- The United States adopted the Law on Victims of Crime Act in 1984. Under this Act a crime victim fund was established. Today it serves as a major funding source for the victims services throughout the country. Every year millions of dollars are deposited into this fund from criminal fines, forfeited bail bonds, penalty fees and special assessment collected by US Attorney offices, US courts and the Bureau of prisons. In the same way, the states have enacted legislations and through their respective budget allocation ensured that victims of crimes are compensated accordingly.

United Kingdom- The UK Government introduced an effective rehabilitation mechanism through the Criminal Injuries Compensation Act, 1995 redressing the needs of victims of crime. The criminal injuries compensation scheme is growing constantly. Under this Act, the scheme began in 1996, prior to it, in 1964 the criminal injuries compensation authority was set up for this very purpose. The criminal injuries compensation board dealt with similar claims. This made the UK first country to have established a scheme of criminal injuries compensation. The criminal injuries compensation authority offer purely financial compensation to the victim of violent crimes.

² Dwarka Nath Mitter, *The Position of Women in Hindu Law* 1984 Inter-India Publications, p 191.

³ David M. Walker, *The Companion to Law* (1980), p. 138.

Australia- In Australia, under the Criminal Injuries Compensation Act 2003, compensation can be sought for an incident reported to the police regardless of whether a person has been identified charged or convicted of the offence. Compensation can be awarded for suffering bodily harm, mental or nervous shock or pregnancy resulting from an offence. Compensation may cover pain and suffering, loss of enjoyment of life, loss of income, medical expenses and other incidental expenses such as travel for medical treatment or damage of clothing.

Compensation and Rehabilitation policy of Rape victims in India:

The right to compensation and rehabilitation of victims of rape is provided, expressly or impliedly by the constitution itself and various enactments. This context will be discussed under the following heads.

The constitutional provision as to fundamental rights especially Article 21 could be widely interpreted so as to include rights of the victims of crime including right to compensation.⁴ In *Delhi Domestic Working Women's Forum v. Union of India* is the leading case on this point. Further in *Chairman, Railway Board v. Chandrima Das*⁵ the Supreme Court provided compensation to Bangladeshi woman on being gang raped. The Supreme Court stated:

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

Further the court stated that as the right available under article 21 of the constitution was violated, the state was under constitutional liability to pay compensation to her. Similarly, the constitutional remedies under article 32 and 226 for violation of fundamental rights are extremely applicable to the victims of rape⁶.

The principle of payment of compensation to the victim of crime was evolved by Hon'ble Supreme Court on the ground that it is duty of the welfare state to protect the fundamental rights of the citizens not only against the actions of its agencies but is also responsible for hardships on the victims on the grounds of humanitarianism and obligation of social welfare, duty to protect its subject, equitable Justice etc. It is to be noted that compensation by the State for the action of its official was evolved by the Hon'ble Court against the doctrine of English law: "King can do no Wrong" and clearly stated in the case of *Nilabati Behra v. State of Orissa*⁷ that doctrine of sovereign immunity is only applicable in the case of tortuous act of government servant and not where there is violation of fundamental rights and hence in a way stated that in criminal matters (of course if there is violation of fundamental rights) this doctrine is not applicable.

Further there are some provisions in Directives Principles of State Policy, which can be so liberally construed that they may cover victims of crime entitling them to right to compensation. This article

⁴Article 21, Constitution of India.

⁵AIR 2000 SC 988.

⁶Article 32 and 226, constitution of India.

⁷ AIR 1960, 1993 SCR (2) 581.

provides for policies to be followed by the state to secure economic justice.⁸

Article 40 provides for equal justice inclusive of victims right to compensation⁹. Article 41 states that the state shall make effective provisions for “securing public assistance in cases of disablement” and in the case of undeserved want. The term disablement and undeserved want is sufficient enough to include victims of crime. So, the state is obliged to provide public assistance to victims by way of monetary compensation apart from guarantee other rights to them.¹⁰ The Hon’ble Supreme Court in Delhi Domestic Working Women’s Forum Vs. Union of India and others writ petition (CRL) No.362/93 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. To give effect to the aforesaid direction of the Hon’ble Court, the National Commission for women had sent a draft scheme to the Central Government in 1995. Scheme for Relief and Rehabilitation for Victims of Rape

1. The scheme may be called the “Scheme for relief and Rehabilitation of Victims of Rape, 2005”.
2. The scheme shall apply to the whole of India.
3. It shall come into force on such date as the Central Government may by notification in Official Gazette, appoint.
4. The scheme shall cover all cases where an application has been filed either by the rape victim herself or by any person/organisation/ department/ commission claiming on her behalf;
5. “Rape”, will have the same meaning as defined in section 375 and 376 of the Indian Penal Code;

Compensation and Rehabilitation policy under Criminal Laws:

Besides the constitution of India, other enactments also provide for compensation and rehabilitation to victims. The criminal law has taken care of providing compensation to the person, who has to suffer due to something wrong against him. Even, the Code of Criminal Procedure, 1898 recognized the right of victims of crime to receive compensation. But, the main problem under section 545 that compensation was provided only where a substantive sentence of fine was imposed and was limited to the amount of fine actually realized.

This lacuna has been removed in the Criminal Procedure Code, 1973 where section 357(3) provides compensation even where the accused is not sentenced to fine.¹¹ Though the provisions is good, but it has its own limitations as-

⁸ Article 39, Constitution of India.

⁹ Article 40, Constitution of India.

¹⁰ Article 41, Constitution of India.

¹¹ Rehabilitation of Sexually Assaulted Women, Press Information Bureau, Press Release, 3rd march 2011, *available at:* <http://pib.nic.in> (last visited on November 22, 2016).

1. The section applies only when the accused is convicted.
2. In awarding the compensation, the magistrate has to consider the capacity of the accused to pay.

Report of Law Commission of India:

The 154th law commission report recommended incorporating a new section 357A in the code to provide for a comprehensive scheme of payment of compensation for all the victims fairly and adequately by the court. Consequently, Sec 357A was inserted in the Criminal Procedure Code by the Code of Criminal Procedure (Amendment) act, 2008.¹²

On 14th October 2015, the Ministry of Home Affairs set up a Central Victim Compensation Fund with the following objectives.

1. To support and supplement the existing compensation scheme notified by states/UT administration.
2. To reduce disparity in quantum of compensation amount notified by different states/UT for victims of similar crimes.
3. To encourage states/UTs to effectively implement the victim compensation scheme notified by them under the provisions of section 357A of Criminal Procedure Code and continue financial support to victims of various crimes especially several offences including rape, acid attack, crime against children, human trafficking etc.

This fund is set up with the initial corpus of Rs. 200 crore to be sanctioned by the Ministry of Finance.

Judicial Pronouncement on Sexual Harassment:

The Indian judiciary has shown a mixed trend over the years. While the period immediately after independence and up to the 1970's witnessed a conservative and narrow minded judicial system, the late 80's and 90's have seen the emergence of judicial activism which reached its heights in the case of *Sakshi v. Union Of India*,¹³ the Mathura Rape Case¹⁴ or the Nandan Kanan rape case¹⁵ of Orissa or Raju's Case of the 90's. In numerous cases to do justice to the victim, the Supreme Court and various high courts have directed payment of monetary compensation as well as rehabilitative settlement where state or other authority failed to provide life and liberty of victim. The Hon'ble Supreme Court in the case of *Delhi Domestic Working Women's Forum v. Union of India and others*¹⁶ 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

¹²The Law Commission of India, 154th report on Criminal Procedure Code, 1973 (August 22, 1996).

¹³ AIR 2004 SC 3566.

¹⁴ *Ibid.*

¹⁵ AIR 1977 SC 1307.

¹⁶ AIR 1995 1 SCC 14

result of rape. To give effect to the aforesaid direction of the Hon'ble Court, the National Commission for Women had sent a draft scheme to the Central Government in 1995.

In the case of *Suresh & Another v. State Of Haryana*, the Supreme Court has held that, “Expanding scope of article 21 is not limited to providing compensation when the state or its functionaries are guilty of an act of commission but also to rehabilitate the victim or his family whether the crime is committed by an individual without any role of the state or its functionary”. In the case of *Shri Bodhisattwa Gautamys v. Miss Subhra Chakraborty*¹⁷ the Supreme Court emphasize about the crime of rape and affirmed the view that rape is less a sexual offence than act of aggression aimed at degrading and humiliating women. It destroys the entire psychology of a woman. In the case of *Ankush Shivaji Gaikwad v. State of Maharashtra*¹⁸ the Supreme Court emphasized that victim is not to be forgotten in criminal justice system and Section 357 Cr.P.C. should be read as imposing mandatory duty on the Court to apply its mind to the question of awarding compensation in every case. The Supreme Court views on Compensation as need for long-term Rehabilitation. Survivors of rape should be compensated by giving them half of the property of the rapist(s) as compensation in order to rehabilitate them in Society. P. Sathasivam, CJI, 23rd Jan 2014 further added that “Merely providing interim measures for their stay may protect them for time being but long-term rehabilitation is needed as they (Family Members) are all material witnesses and likely to be socially ostracized. In the case of *Re v. Indian Women*,¹⁹ the Supreme Court held that the obligation of state doesn't extinguish on payment of compensation, and rehabilitation of victims is also of paramount importance the mental trauma that the victim suffers due to commission of such heinous crime, rehabilitation becomes a must in each and every case.

In the case of *Tekan alias Tekram v. State of MP*²⁰ The hon'ble Supreme Court gave the direction regarding compensation schemes of various states. It stated that all the states and union territories shall make all endeavors to formulate a uniform scheme in respect of rape/sexual exploitation with the physically handicapped women as required under the law taking into consideration the scheme framed by the state of Goa for rape victims compensation.

The Nirbhaya rape case a major breakthrough in the history of rape legislation in India. The mass agitation throughout India to get justice for Nirbhaya forced the government to rethink on existing legal provisions. Which resulted in constitution of J.S. Verma Committee. Which recommended many changes in criminal law. Nirbhaya is the pseudonym used for the rape victim of the infamous 16 December 2012 Delhi gang rape incident. On 16 December 2012 night in Delhi, Nirbhaya and her friend were returning from a movie theatre, they were waiting for a bus. One of the would-be culprits convinced them to get on an empty bus with tinted windows. They were assaulted by six males, one of whom was a minor, aged 17. The friend, when he tried to protect Nirbhaya, was beaten up by the perpetrators. Nirbhaya was not just sexually violated; her body was mutilated beyond human

¹⁷AIR 1996 SC 992.

¹⁸AIR 2013 SCC 770.

¹⁹ AIR 2014 SC

²⁰AIR 2015 SC 884.

imagination. Her intestines were pulled out, and private parts mutilated. She later died of multiple organ failure, internal bleeding and cardiac arrest on the 29th of December 2012. There was a lot of social outrage due to the gruesome incident. There were a lot of candle light marches, solidarity movements and protests. India has always been notorious for being unsafe for women, and this was the spark which ignited the fire of public outrage. The outrage was not restricted to India; the whole world had formed an opinion about India. A British documentary called “India’s Daughter” was banned by the central government because it portrayed India in a very derogatory and poor light. A majority of the outrage poured out on social media. In the contemporary times, with easy access to technology, the reactions on social media often reflect the mood and situation in the country. Organisations like All India Progressive Women’s Association (AIPWA) also made its mark. Its secretary became one of the lead voices for women’s rights on Twitter.

Feminist and women’s movements gained momentum and incentive. The culprits were made an example of and condemned. Not just social, there were legal repercussions of the incident too. The UPA government was being pressurized to make stricter laws regarding rape and dealing with juveniles committing heinous crimes.

Just about a week after the Nirbhaya incident, Committee on Amendments to Criminal Law (Justice Verma Committee) was formed to suggest some long needed changes to criminal laws, especially with respect to women’s rights. The members of the committee were Justice J.S. Verma (Chairperson), former Chief Justice of India, Justice Leila Seth, a former High Court Judge, and Gopal Subramaniam, former Solicitor General of India. The Committee submitted its report on January 23, 2013. It made recommendations on laws related to rape, sexual harassment, trafficking, child sexual abuse, medical examination of victims, police, electoral and educational reforms.

Central Victim Compensation Fund 2015:

After the Nirbhaya incident in 2012, Government of India established Nirbhaya Fund in 2013, with an initial corpus of Rs. 1000 crore. There have been widespread reports of the non-utilization of the fund. Government data also shows that a lot of projects are yet to take off. In 2015 the government has introduced a Central Victim Compensation Fund (CVCF) scheme, with an initial corpus of Rs 200 crores, to enable support to victims of rape, acid attacks, human trafficking and women killed or injured in the cross border firing. Till now, there has been an absurd disparity in compensation amount paid by state governments varying from Rs 10,000 to Rs 10 lakh.²¹ The compensation part of the rehabilitation of victims of violence including rape is governed by provision of Section 357A of the Code of Criminal Procedure which states that 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 of crime. So far 24 states and 7 UTs have formulated the Victim Compensation Scheme.

The Criminal Law (Amendment) Ordinance, 2018

The Criminal Law (Amendment) Ordinance, 2018 was promulgated on April 21, 2018. It amends certain laws related to rape of minors. The amendments are as follows:

²¹ No. 24013/94/misc./2014-csr.III Govt of India/ministry of Home Affairs.

Enhanced punishment for rape: Under IPC, 1860, the offence of rape is punishable with a rigorous imprisonment of at least seven years up to life imprisonment, along with fine. The minimum imprisonment has been increased from seven years to ten years.

New offences: The Ordinance introduces three new offences relate to rape of minors, and increases the **penalty for one:**

Below 12 years-

Rape: Rigorous imprisonment of at least 20 years extendable to life imprisonment, along with fine to meet medical C, or, death. 2. Gang Rape: Life imprisonment, along with fine to meet medical expenses and rehabilitation cost of the victim, or, death.

Below 16 years-

Rape: Previously, the punishment for rape was ten years extendable to life imprisonment along with fine. This has been enhanced to a minimum rigorous imprisonment of at least 20 years, extendable to life imprisonment, along with fine, to meet medical expenses and rehabilitation cost of victim. 2. Gang Rape: Life imprisonment, along with fine, to meet medical expenses and rehabilitation cost of victim.

Conclusion and Suggestions:

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. But I think the all credit goes to the individual or organizations which has raised their voice in favor of the rape victims. And this all started in 1978 in Mathura case. But there are some steps which must be taken by legislature or judiciary. For example, a proper accommodation and monetary help must be provided to the rape victims when she is not able to work. Because sometimes she could not be in the position to survive independently. In those circumstances the government must come forward to provide a dignified life. Moreover the education system of the country must be effective because there are some cases in which the criminal even doesn't know the consequences of the act.