

Compensation and Rehabilitation of Rape Survivors A Constitutional Right

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Abstract

Supreme Court of India recently observed that no compensation can be adequate nor can it be of any respite for the victim but as the State has failed in protecting such serious violation of a victim's fundamental right, the State is duty bound to provide compensation, which may help in the victim's rehabilitation. The humiliation or the reputation that is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace.

Cases of rape and sexual violence against women and children are increasing throughout India inspite of post Nirbhaya amendments in the Criminal Law in 2013 and enactment of other special statute.

This paper deals with modern approach of penology and victimology which is striking a balance between rights of accused, victim and society. Various statutory provisions and decisions of the Supreme Court have been studied and analysed to highlight the need for compensation and rehabilitation of rape survivors as a constitutional obligation for human rights cause. Factors considered for deciding quantum of compensation, mechanism to fast track for delivery of compensatory relief and long term rehabilitation has been discussed and recommendation for implementation. Critical analysis of Victim Compensation Schemes (VCS) in various states after amendments and insertion of Section 357 A, in Criminal Amendment Acts, 2009 and 2013 was done in this paper.

Key Words: Compensation, Rehabilitation, Restitution, Rape, Crime against Women, Sexual Harassment of Women

Introduction:

Article 21 of the Constitution guarantees 'right to life', which includes protection of life and liberty of all members of the society. 'Vigilantism' as a phenomenon is on a rise in our [Indian] society. This is dangerous and can pose serious threat to the Rule of Law and peace in society.

However, the desire for retribution leading to the victims taking 'law in their own hands' can be effectively checked only where the victims perceive that the criminal justice system will assure them justice and protection.

The need to address cry of victims of crime, for whom the Constitution in its Preamble holds out a guarantee for 'justice' is paramount. The victims have right to get justice, to remedy the harm suffered as a result of crime.

This right is different from and independent of the right to retribution, responsibility of which has been assumed by the State in a society governed by Rule of Law. But if the State fails in discharging this responsibility, the State must still provide a mechanism to ensure that the victim's right to be compensated for his injury is not ignored or defeated.

Right of access to justice under Article 39-A and principle of fair trial mandate right to legal aid to the victim of the crime. It also mandates protection to witnesses, counselling and medical aid to the victims of the bereaved family and in appropriate cases, rehabilitation measures including monetary compensation.

It is a paradox that victim of a road accident gets compensation under no fault theory, but the victim of crime does not get any compensation, except in some cases where the accused is held guilty, which does not happen in a large percentage of cases.

In **S. S. Ahluwalia vs. UOI** (2001) 4 SCC 452, Hon'ble Supreme Court held that in expanded meaning attributed to Article 21 of the Constitution, where the State fails to protect the life of the people, it could not escape the liability to pay compensation to the victims.

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Global Scenario:

Scenario in UK:

Set up in 1964 the Criminal Injuries Compensation Authority is responsible for administering the Criminal Injuries Compensation Scheme throughout England, Wales and Scotland.

From 1996 each injury was awarded a specific fixed compensation ranging from 1000 UK Pounds to 250000 UK Pounds. Apart from these; the applicants are also eligible to get compensation for earnings and special expenses for up to UK 250000 Pounds. [5]

The Ministry of Justice now funds the entire scheme; it was formerly funded by the Home Office. Victims as well as their relatives/dependants are entitled for compensation for personal injuries as well fatal injuries. Compensation is awarded to cover costs of medical expenses, funeral expenses, and loss of earnings, mental stress and trauma, medical expenses for special care and also for loss of reputation.

While arriving at the decision to award compensation the Authority looks into the previous criminal record of the applicant, the relevant police reports, and medical reports among other criteria. A right to appeal against the decision of the Authority is also provided. [5]

Scenario in Canada:

Several provinces in Canada have enacted laws ensuring victims of crimes are compensated. The Ontario Compensation for Victims of Crime Act, 1990 provides for the establishment of a Criminal Injuries Compensation Board. In its terms, victims their dependants or by persons looking after them can claim compensation.

Heads of compensation cover expenses actually and reasonably incurred or to be incurred as a result of the victim's injury or death; pecuniary loss incurred by the victim as a result of total or partial disability affecting the victim's capacity for work; pecuniary loss incurred by dependants as a result of the victim's death; pain and suffering; support of a child born as a result of rape and other pecuniary loss resulting from the victim's injury and any expense that, in the opinion of the Board, it is reasonable to incur.

Apart from these, the Board is also entitled to award compensation in lieu of any common law rights accruing to the victim. Interestingly, under this enactment, compensation can be awarded irrespective of the *factum* of conviction, thereby signalling the change from a deterrent/retributive model to a rehabilitative one. The compensation can be

administered through a lump sum payment or instalments or under directions of the Board. [5]

Scenario in USA and Australia:

A similar regime is prevalent though state legislations in the United States and Australia as well, where several states have enacted legislations and through their respective budget allocations ensured that victims of crimes are compensated accordingly.

In Western Australia for example, 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. [5]

Indian Scenario:

Compensation and Constitution:

Rape involves violation of fundamental rights under Article 21 of the Indian Constitution. Compensation for the violation of fundamental rights is given by way of penalizing the State for violating the fundamental rights guaranteed by the Constitution of India and for the breach of its public law duty. This compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of a public law duty. This is apart from and in addition to compensation granted for the loss or injury under the law of torts.

"It is a weakness of our jurisprudence that the victims of the crime, and the distress of the dependants of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law. This is a deficiency in the system which must be rectified by the Legislature. We can only draw attention in this matter." - Justice Krishna Ayyar, 1980 [Source: "Rattan Singh vs. State of Punjab" AIR 1980 Supreme Court 84]

Thus, modern approach of victimology acknowledge that a crime victim has right to be adequately compensated, rehabilitated and repaired irrespective of identification and prosecution of offender and the payment of such compensation should be made by state.

Compensatory Justice:

Criminal jurisprudence has moved beyond the traditional domains of retributive and deterrent values. The shift is increasingly

towards victim centric compensatory models of justice. Many societies have forged mechanisms to address these issues.

The idea underlying **compensatory justice** is not merely to rehabilitate the victim, but also leads to a *regime* where societal values in seeing such crimes as aberrations, entitling the victim to some form of compensation due to the stark intensity of the crime.

Therefore, the concept of a publicly funded and administered body to compensate victims of violent crime has been in practice in many countries across the world for quite a while. Compensation is granted not merely when the State is at fault but also when the crime is violent and serious; and thus the role of the State assumes the welfare hue.

Scheme drafted by the NCW:

In India, pursuant to the Supreme Court directive in the Delhi Domestic Working Women's Forum case [6], the National Commission for Women drafted the Scheme for the Rehabilitation for Victims of Rape, 2005.

The scheme provided for the setting up of Criminal Injuries and Rehabilitation Board at the District and State level and a National Criminal Injuries and Rehabilitation Board.

The scheme gives details about the constitution, functions and the budgetary allocation of the Authorities constituted under it.

It provides for compensating rape victims, irrespective of whether the perpetrator has been brought to justice. It provides for legal aid and other measures that will help such victims. However, there is nothing suggestive of any further thinking on these issues, or executive will to take the thought further.

SC in **Bodhtswa case, 1996, recognized the right of the victim for compensation:** Court referred previous judgment of **Delhi Domestic Working Women's Forum, case of 1994. This decision recognises the right of the victim for compensation** by providing that it shall be awarded by the Court on conviction of the offender subject to **the finalisation of Scheme by the Central Government. If the Court trying an offence of rape has jurisdiction to award the compensation at the final stage**, there is no reason to deny to the Court the right to award interim compensation which should also be provided in the Scheme.

On the basis of principles set out in the aforesaid decision in **Delhi Domestic Working Women's Forum**, the jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the Courts trying the

offences of rape which, as pointed out above is an offence against basic human rights

Justifications for Compensation:

Various justifications for compensation have been used, such as:

1. Benefit to the victims,
2. Symbolic social recognition for the victim's suffering,
3. Deterrent effects on the offender as also the reformatory effects on the offender as the **paying of compensation has an "intrinsic moral value of its own"**. [5]

SC Views on Compensation: 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** Court 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.- **P. Sathasivam, CJI, 23rd Jan 2014**

Mandatory Duty of the Court:

In "**Ankush Shivaji Gaikwad vs. State of Maharashtra**", 2013 [7] 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.

Interim Compensation and Vicarious Liability:

In addition, compensation may be given for mental harassment, pain, suffering, and for loss of earnings. The State is also liable for fundamental rights violations committed by its servants, and should pay compensation for such injuries. In cases of SHW, women may seek compensation for the violation of their fundamental rights.

Vicarious Liability of Government:

It was held that the Government will be vicariously liable for the tortuous act of its employees. It was on the basis of the above facts that the High Court had awarded a sum of Rs.10 lacs 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.

Many states are yet to finalise a scheme for compensation of victims of crime, including violence against women, nearly four years after

the Centre notified the provision for providing relief by amending the Cr.P.C. After the notification of a new section in the Cr.P.C. in December 2009, the Union Home Ministry had initiated the process of making states notify the Victim Compensation Scheme in September 2010 but **only four states came up with a scheme within one year. Sikkim was the first to launch a scheme in June 2011, while Karnataka notified it in February, 2012.**

According to senior Home Ministry official the seven states yet to fall in line are Jammu and Kashmir, Kerala, Tamil Nadu, Madhya Pradesh, Maharashtra, Nagaland and Uttarakhand. The Ministry had conducted seven co-ordination meetings through video conferencing with Home Secretaries of these states since May 2011.

"The ministry is overseeing the notification and implementation of Victim Compensation Scheme in states and Union Territories," the official said. As of now, 17 states and seven Union Territories have notified the scheme while four are on the verge of doing it. The Ministry has **received the draft notifications** from Andhra Pradesh, Punjab, Uttar Pradesh and Meghalaya.

The official said the ministry would be asking the seven remaining states to speed up the process. The provision came into being after the CrPC was amended by adding a new Section 357A which dealt with the modalities for compensating victims of crime.

According to an analysis of the notifications issued, **Goa has fixed the maximum compensation for rape at Rs ten lakh**, followed by seven Union Territories at Rs 3 lakh. The Sikkim State government has framed a scheme to provide compensation to victims who have suffered loss or injury as a result of a crime. Called the "**Sikkim Compensation to Victims or his Dependents Schemes**", this was instituted in **mid-2011** and not only provides for compensating victims but also their dependents according to the nature of loss or injury suffered. The compensation amount ranges from a minimum of Rs. 20000 [for simple loss or injury to a child victim], to Rs.2 lakh as compensation for loss of life due to crime. The scheme has been framed under the Code of Criminal Procedure.

Status of Victim Compensation Scheme in India:

Scheme in place:

1. Rajasthan (Rs.2.00 Lakhs)
2. Assam (Rs.1.75 Lakhs)
3. West Bengal (Rs.20000 to 30000)

4. Union Territories (Rs.3.00 lakhs)
5. Goa (Rs.10 Lakhs)
6. Haryana (Rs.3.00 Lakhs)
7. Delhi (Rs.3.00 to Rs.5.00 Lakhs)

Yet to take initiative for drafting the Scheme:

1. Jammu and Kashmir,
2. Kerala,
3. Tamil Nadu,
4. Madhya Pradesh,
5. Maharashtra,
6. Nagaland
7. Uttarakhand

Delhi is now after Delhi High Court intervention and amendment proposed in 2014 has enhanced compensation up to Rs. 5 Lakh.

Scenario in State of Rajasthan, 2011:

In an appeal arises from a decision of the Rajasthan High Court in a PIL filed by a Legislator and social activist complaining of arbitrary and discriminatory disbursement of relief under the Chief Minister's Relief Fund (for short 'Relief fund') under the Rajasthan Chief Minister's Relief Fund Rules, 1999 (for short, 'the Relief Fund Rules'). [Para 2]

The respondent alleged that during the period January 2004 to August 2005, challans/charge-sheets were filed in 392 cases relating to rape of minor girls; that out of them, 377 minor girls, did not get any relief or assistance from the Relief Fund, 13 were granted relief ranging from Rs.10000 to 50000. One victim (minor 'K') was given Rs.395000 on 11.8.2004 and another victim (minor 'S') was given Rs.500000 on 25.6.2005. [Para 2]

Prayer was made for a direction to the appellants to give to all rape victims, who had not been granted any monetary relief or who had been granted a negligibly small relief, **monetary relief of Rs.5 lakhs** and failure to give monetary relief, or failure to give a uniform monetary help, to all victims of rape from the **Relief Fund** is illegal, arbitrary and unconstitutional.

Scenario in Haryana:

In exercise of the powers conferred by section 357-A Cr.P.C. 1973 (Act 2 of 1974), the Governor of Haryana in co-ordination with the Central Government framed the Haryana Victim Compensation Scheme, 2013 for providing funds for the purpose of compensation to the victim or his/her dependents who have suffered loss or injury as a result of the crime and who require rehabilitation The Scheme was notified Vide Notification dated the 3rd April, 2013, No.S.C. 41/C.A. 2/1974/S.357-A/2013.

Scenario in Delhi:

The Delhi Victim Compensation Scheme, 2011 and (Amendment) 2014 has made provisions related to following issues:

- Role of various authorities
- Delhi State Legal Service Authority
- Role of Police
- Role of Divisional Commissioner
- Role of High Court
- Role of Victim

Delhi High Court has shown serious concern related to compensation and rehabilitation of rape victims. Following issues need special consideration:

- Man Power Shortage
- Infrastructure and Equipment Shortage
- Role of Forensic Sciences (including Forensic Medicine) in the criminal investigations process and the justice dispensation system
- Issue of Compensation

Terming the **delay in paying compensation to victims of sexual violence as "unacceptable"**, the Delhi high court ordered payment of nearly **Rs.1.7 crore** lying with the government. On 16.04.2014, a **Division Bench of Acting Chief Justice B D Ahmed and Justice S Mridul** asked the Delhi government **to ensure that the money is disbursed to the 221 survivors within two weeks**, after the issue is decided by authorities including the **Delhi State Legal Services Authority (DSLISA)**.

The court was upset that despite its clear orders, **the state government had delayed in compensating the victims**. It warned that if the government doesn't fall in line, **it will be constrained to treat the failure as contempt of court**. The Delhi High Court also **pulled up DSLISA for delaying the release of compensation, and for taking long in deciding prima facie if the case is genuine**.

HC also issued other key directions while hearing a case it **initiated suo moto after the Nirbhaya incident**. The court is monitoring steps to improve the overall safety of women in Delhi, including compensation to survivors of sexual violence such as rape, setting up more CFSL facilities, and induction of more women policemen.

Lengthy Process, Little Action:

- **Only 483 of 3000 cases referred for relief in 2 years**; Of the 483 cases, compensation was awarded in 304 cases till April 2014
- **Fund Disbursal Slow**
- **Why the delay?**

- **Lack of awareness** among **survivors, police** and **lawyers** about **survivor's right to be compensated**
- Involvement of **multiple agencies**-police, Delhi State Legal Service Authority (DSLISA)
- **Divisional Commissioner**-who often **blame each other for delay** and **files keep shuttling among agencies**
- Most of the times, victims don't get compensation as **police fail to forward cases to DSLISA**, the sanctioning body.
- Files get stuck with divisional commissioner who is responsible for disbursing funds
- In past two and a half years, Govt. has used only Rs.2.06 crore of the allotted Rs.15Crore
- **Step 1:** Police after FIR has to inform (recommend) to the DSLISA for award of Compensation
- **Step 2:** DSLISA has to hold an Inquiry to see the suitability of case for award of Compensation and submit recommendation to the Divisional Commissioner
- **Step 3:** Divisional Commissioner has to disburse the Compensation Awarded to Rape Victim Survivors/Legal Kins
- **Step 4:** Victim and/or her representative can approach the High Court for award of Compensation (within 3 years of incident)

Limitations:

- DSLISA can't award compensation on its own, recommendation by police a must
- Courts can give compensation or refer it to DSLISA only if survivor or family moves an application before it
- If the offender is absconding or unidentified, survivor has to claim compensation within 3 years of the incident

Solutions:

- Creating awareness and sensitizing police, survivors and lawyers
- Notification of the amended scheme which aims at expediting the process
- Make it a one-window facility
- DSLISA should decide within a month if a case is fit for compensation
- Compliance of a recent Delhi High Court order according to which Divisional Commissioner should not take more than two weeks to disburse compensation

Making the Scheme Better:

- Amended Delhi Victim's Compensation Scheme aims at expediting the process of providing compensation to rape and other assault victims
- Amended scheme will help in rehabilitating all sexual victims

- Victims of rape will be categorized under Sub-categories of gang rape and unnatural sexual assault
- Victim of unnatural sexual assault can get Rs.2-5 lakh

Enhanced Compensation and Speedy Disbursement

- Gang rape victims can get a compensation of Rs.3-7 lakh
- Maximum compensation for loss of life up from Rs.5 lakh to Rs.10 lakh
- Maximum compensation for rape increased from Rs.3 lakh to Rs.5 lakh
- Relief amount for other injuries also up by Rs.1-2 lakh
- Victims of acid attacks and burning will be compensated, depending upon nature of injuries.
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Scenario in West Bengal:

In exercise of the powers conferred by Section 357A by the Code of Criminal Procedure 1973 (2 of 1974) the Governor is pleased to declare the West Bengal Victim Compensation Scheme, 2012 for providing compensation to those victims of crimes or his/her dependents who have suffered loss or injury and who require rehabilitation vide notification **No.5299-PL, Dated 1st November, 2012, the Kolkata Gazette Notification dated 8th November 2012**, Registered No.WB/SC-247, No.WB (Part-I)/2012/SAR-408.

The West Bengal Government has announced that the state will provide monetary compensation to women who are raped. In a decision taken on Thursday, it said that minors, who are raped, will be given compensation of Rs. 30,000 and adult women will be given Rs. 20000. The state cabinet approved a compensation scheme for victims of criminal cases and natural disasters.

Compensation will also be given in case of deaths and injury causing handicap. The decision to provide compensation will be taken by committees headed by district magistrates.

Scenario in U.P.:

The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, enacted in 1989, provides monetary compensation to victims of rape. In Uttar Pradesh, a law is in existence since the 1970s, gives compensation of Rs. 5000 if the woman raped is from a scheduled caste or tribe.

Scenario in Punjab:

Victim Compensation Scheme of Punjab Government virtually non-functional, as no funds released by the Government to the District Legal Services Authority in Punjab- the Courts also do not appear to be sensitized towards this Scheme. RTI information procured from the various District Legal Services Authorities in Punjab reveals that these District Legal Services Authorities have not received any grant from the State Government.

The information received from Secretaries of District Legal Services Authorities of Ludhiana, Faridkot, Kapurthala, Fatehgarh Sahib, Barnala, Sri Muktsar Sahib, Bathinda and Fazilka have stated in their reply to RTI applications that these Authorities have not given any compensation for the loss of life/murder/Rape/loss of limb etc. to the victim under the Compensation Scheme, 2011, later on modified vide notification dated 17.6.2013.

Domestic Violence against Women Act, 2005 reads Compensation Order:

“Section 22: In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries including mental torture and emotional distress, caused by the act of domestic violence committed by that respondent.

Need for creation of ‘Victim Compensation Fund’

The ‘Victim Compensation Fund’ shall comprise the following:

1. Budgetary allocation for which necessary provisions shall be made in the Annual Budget by the (Concerned) Government.
2. Receipt of amount of fines imposed under section 357 Cr.P.C., and ordered to be deposited by the courts in the Victim Compensation Fund
3. Amount of compensation recovered from the wrongdoer/accused under clause 9 of the scheme.
4. Donations/contributions from International /National/ Philanthropist/ Charitable Institutions /Organizations and Individuals.

Only few States has made these provisions for creation of “Victim Compensation Fund”. State of Haryana and Delhi are few examples in this regard.

Compensation & Rehabilitation Provisions in POCSA, 2012 [15]:

In appropriate cases, the Special Court may, in addition to the punishment, **direct**

payment of such compensation as may be prescribed to the child **for any physical or mental trauma** caused to him or **for immediate rehabilitation of such child**. [Chapter VIII, 33 (8)] [1]

Rulemaking Power of Central Government:

The **Central Government** may, by notification in the Official Gazette, make rules for carrying out the purpose of this Act. [Chapter IX, 45 (1)] [1]

Provisions further emphasize that in particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:

- a. The qualifications and experience of , and the fees payable to, a translator or an interpreter; a special educator or any person familiar with the manner of communication of the child or an expert in that field, under sub-section (4) of section 19; sub-sections (2) and (3) of section 26 and section 38; [Chapter IX, 45 (2) (a)] [1]
- b. Care and protection and emergency medical treatment of the child under sub-section (5) section 19; [Chapter IX, 45 (2) (b)] [1]
- c. The payment of compensation under sub-section (8) of section 33; [Chapter IX, 45 (2) (c)] [1]
- d. The manner of periodic monitoring of the provisions of the Act under sub-section (1) of section 44. [Chapter IX, 45 (2) (d)] [1]

Provisions of Compensation in the SHW at Workplace Act, 2013 [16]:

On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties. [Para 13 (1)] [2]

Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be:

- To take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed; [Para 13 (3)(i)] [2]
- To deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent

such sum as it may determine, in accordance with the provisions of section 15; [Para 13 (3)(ii)] [2]

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman;

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, the Local Committee as the case may be, may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him. [Para 13 (4)] [2]

Determination of Compensation:

For the purpose of determining the sums to be paid to the aggrieved woman under clause (ii) of sub-section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to:

- (a) The mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
- (b) The loss in the career opportunity due to the incident of sexual harassment;
- (c) Medical expenses incurred by the victim for physical or psychiatric treatment;
- (d) The income and financial status of the respondent;
- (e) Feasibility of such payment in lump sum or in instalments. [Para 15 (a, b, c, d, e)] [2]

Criminal Law Amendment Act, 2013 [17]:

376D. Where a woman is raped by **one or more persons constituting a group** or **acting in furtherance of a common intention**, each of those persons shall be deemed to have committed the offence of rape and shall be punished with **rigorous imprisonment** for a term which shall **not be less than twenty years**, but which **may extend to life** which shall **mean imprisonment for the remainder of that person's natural life**, and **with fine**:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim

Provision of Free Treatment:

After section 357A of the Code of Criminal Procedure, the following sections shall be inserted, namely:

"357B: The **compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Indian Penal Code, 45 of 1860. [Para 23] [3]**

357C. All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the **first-aid or medical treatment, free of cost, to the victims of any offence** covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code, 45 of 1860 and **shall immediately inform the police of such incident.**" [Para 23] [3]

Summary and Conclusions:

It appears that Courts do not appear to be adequately sensitized towards the Scheme, due to which cases in which compensation has been awarded are very few.

From the above line of cases, it becomes very clear, that, a sentence of imprisonment can be granted for default in payment of compensation awarded under Section 357(3) of Cr.PC. **The whole purpose of the provision is to accommodate the interests of the victims in the criminal justice system.** Sometimes the situation becomes such that there is no purpose is served by keeping a person behind bars. Instead directing the accused to pay an amount of compensation to the victim or affected party **can ensure delivery of total justice.**

Therefore, this grant of compensation is sometimes in lieu of sending a person behind bars or in addition to a very light sentence of imprisonment. Hence on default of payment of this compensation, there must be **a just recourse.** Not imposing a sentence of imprisonment would mean allowing the accused to get away without paying the compensation and imposing another fine would be impractical as it would mean **imposing a fine upon another fine and therefore would not ensure proper enforcement of the order of compensation.**

While passing an order under Section 357(3), it is imperative for the courts **to look at the ability and the capacity of the accused to pay the same amount** as has been laid down by the cases above, **otherwise the very purpose of granting an order of compensation would stand defeated.** [Para 27] Compensation and Rehabilitation of survivors of rape is need of the hour in view of

the violation of fundamental rights of the victim under Article 21 of the Indian Constitution. Court can play a great role in delivery of justice by awarding compensation and directions for rehabilitation of the victims.

Ends of justice can be served if all the stakeholders do their duty in letter and spirit of the Indian Constitution and other relevant Statutory provisions related to compensation and rehabilitation of victims of crime especially victim of rape. There is need to create awareness and education about these rights among all the sections of the society by organizing CMEs, Seminar and Conferences.

In the words of *Sawami Sivananda* "Every effect has a cause. Every consequence has an antecedent. There must be perfect balance between the cause and effect, between the antecedent and consequence. The law of compensation keeps up the balance, and establishes peace, concord, equilibrium, harmony and justice in Nature."

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14. West Bengal Victim Compensation Scheme, 2012 Available at: <http://wbcdwdsw.gov.in/wd/dsw/wbvc-2012.pdf>
15. The Protection of Children against Sexual Offences Act, 2012, (Act No.32 of 2012)
16. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No.14 of 2013) Received Assent of the President of India w.e.f. 23rd April 2013 Notified on 6th December 2013
17. The Criminal Law (Amendment) Act, 2013 (Act No. 13 of 2013 [2nd April, 2013] It shall be deemed to have come into force on the 3rd day of February, 2013.