

Victim compensation schemes in India (Gujarat, Delhi, Telangana and Kerala)*

O programa de indenização das vítimas na Índia (Gujarat, Delhi, Telangana e Kerala)

Sistemas de compensación a las víctimas en la India (Gujarat, Delhi, Telangana y Kerala)

Le programme d'indemnisation des victimes en Inde (Gujarat, Delhi, Telangana et Kerala)

印度的受害者赔偿计划（古吉拉特邦、德里、特伦甘纳邦和喀拉拉邦）

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Abstract

Victim compensation has become a symbolic part of the Indian Criminal Justice System (CJS). With the growth and development of the modern CJS, the States were given the role to provide protection to the people from crimes unlike the ancient and medieval practice. The rights of the victim have been given special recognition by providing them assistance and compensation to make good for the losses incurred due to the commission of the crime. The concept of Victim Compensation Schemes (VCS) for providing compensation to the victims of crime has been accepted widely. India has imbedded it in its CJS under section 357A of the criminal procedure. Under this provision the States are required to frame their own VCS. It is here that the question regarding its effective implementation arises. This paper aims to provide a comparative analysis of the VCS of the States of Gujarat, Delhi, Telangana and Kerala to point out the areas where it is lacking in terms of ambiguity and non-uniformity.

Keywords: assistance, compensation, victim compensation scheme, justice, criminal justice system.

Resumo

A indenização das vítimas tornou-se um elemento simbólico do Sistema de Justiça Criminal da Índia (CJS). Com o crescimento e o desenvolvimento do CJS, aos Estados atribuiu-se o papel de prover aos cidadãos proteção contra crimes, o que não era oferecido pelas antigas práticas medievais. Os direitos da vítima são assim especificamente reconhecidos por meio da assistência e da indenização destinadas a reparar os prejuízos sofridos em função do crime cometido. Visando compensar vítimas de crimes, o conceito de Programas de Indenização das Vítimas (VCS) tem sido amplamente aceito. A Índia o integrou ao seu CJS por intermédio da Seção

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357A do Código de Processo Penal. De acordo com essa disposição, cada Estado é obrigado a elaborar o seu próprio VCS e, justamente neste momento, surge a questão da sua implementação efetiva. Este artigo pretende realizar uma análise comparativa dos VCS dos Estados de Gujarat, Delhi, Telangana e Kerala, a fim de destacar as possíveis fragilidades em termos de ambiguidade e carência de uniformidade.

Palavras-chave: Assistência, indenização, Programa de indenização das vítimas, justiça, sistema penal.

Resumen

La compensación de las víctimas se ha convertido en una parte simbólica del Sistema de Justicia Penal de la India (SJP). Con el crecimiento y desarrollo del SJP moderno, a los estados se les otorgó el papel de ofrecer protección a las personas frente a los delitos, un cambio frente a la práctica antigua y medieval. Se pasaron a reconocer, en especial, los derechos de la víctima, a la que se brinda asistencia e indemnizaciones para reparar los perjuicios ocasionados por la comisión del delito. El concepto de sistema de compensación a las víctimas para compensar a las víctimas de delitos ha sido ampliamente aceptado. India lo ha incluido en su SJP, en la sección 357A del procedimiento penal. En virtud de esta disposición, los estados están obligados a formular su propio sistema de compensación a las víctimas. Es aquí donde surge la pregunta sobre la efectividad de su implementación. El objetivo de este trabajo es proporcionar un análisis comparativo del sistema de compensación a las víctimas de los estados de Gujarat, Delhi, Telangana y Kerala para señalar aquellas áreas en las que dicho sistema se caracteriza por su ambigüedad y falta de uniformidad.

Palabras clave: asistencia, compensación, sistema de compensación a las víctimas, justicia, sistema de justicia penal.

Résumé

L'indemnisation des victimes est devenue un élément symbolique du Système indien de justice pénale (CJS). Avec la croissance et le développement du CJS actuel, les États se sont vu confier le rôle de fournir aux citoyens une protection contre les crimes que ne leur offraient pas les anciennes pratiques médiévales. Les droits de la victime sont ainsi spécifiquement reconnus par le biais d'une assistance et d'indemnisations visant à réparer les pertes subies en fonction du crime commis. Le concept de Programmes d'indemnisation des victimes (VCS) visant à indemniser les victimes d'actes criminels a été largement accepté. L'Inde l'a intégré à son CJS par l'entremise de l'Article 357A du Code de procédure pénale. En vertu de cette disposition, chaque État est tenu d'élaborer son propre VCS, et c'est donc là que se pose la question de sa mise en œuvre effective. Cet article entend mener une analyse comparative des VCS des États du Gujarat, de Delhi, du Telangana et du Kerala pour en souligner les éventuelles faiblesses en termes d'ambiguïté et de non-uniformité.

Mots clés: Assistance, indemnisation, programme d'indemnisation des victimes, justice, système pénal.

摘要

受害者赔偿已成为印度刑事司法系统 (CJS) 的象征性组成部分。随着现代 CJS 的成长和发展, 国家与其下辖的各个邦被赋予了保护人民免受犯罪侵害的职能, 这与古代和中世纪的做法不同。受害人的权利得到了特别的承认, 通过向受害人提供援助和补偿, 以弥补因犯罪而遭受的损失。向犯罪受害者提供赔偿的受害者赔偿计划 (VCS) 的概念已被广泛接受。印度已根据刑事诉讼程序第 357A 条将其纳入刑事司法系统中 (CJS)。根据这项规定, 各邦必须制定自己的受害者赔偿系统 (VCS)。正是在这里, 关于它的有效实施的问题出现了。本文旨在对古吉拉特邦、德里、特伦甘纳邦和喀拉拉邦的 VCS 进行比较分析, 以指它们在某些方面的模糊性和不统一性。

關鍵詞: 援助, 赔偿, 受害者赔偿计划, 司法正义, 刑事司法系统。

Introduction

India follows an adversarial system of criminal justice system which requires that the prosecution should lead the evidence and the accused is presumed innocent till the guilt is proven beyond reasonable doubt (VIBHUTE, 2004, p. 362). This approach is largely accused centric i.e., the entire focus remains on the rights of the accused and more often than not the victim is left behind (VIBHUTE, 2004). Many a times the victim is not included in the whole process of providing justice, except being the witness for the prosecution (ANAND, 2004). However, the concept of victim, their rights and the plight of the victims are not new. It is a constant argument that victims are often forgotten under the CJS and their plight is often overlooked (SHANTAGOUDAR, 2016). The impact of any crime towards the individual i.e., the victim, ranges from physical to psychological as well as financial. Such impact can be mild to severe, direct or indirect (NATH, 2020).

There have been various voices at the national (SHANTAGOUDAR, 2016) as well as at international level to provide assistance to the victims of crime (DUSSICH, 2006). Victim Compensation Scheme (VCS) became the core of the CJS in India after the United Nations (1985) *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. It was observed that compensation is an efficient method for offering immediate support to the victim and extending the same to the family of the victim in certain situations (INDIA, 1996).

Victim Compensation has become a symbolic part of the Indian CJS (CHAKRABORTY; CHAKRABARTI, 2020). In order to provide a proper mechanism for awarding compensation the almost all the States in India have devised their own VCS in the light of amendments brought in the Code of Criminal Procedure, 1973 (CrPC). A substantial provision in the form of sec. 357A was incorporated by the Criminal Law (Amendment) Act, 2009. It provides a statutory mechanism for compensation to victims. This provision enabled the courts to direct the government to pay compensation to the victims in those cases where the compensation under the existing sec. 357 appeared inadequate.

To bring some sense of uniformity, the Centre has taken the responsibility of providing guidelines in the form of the Central Victim Compensation Fund Guidelines (CVCF) (INDIA, 2015) in support of the VCS devised by the States.

The paper aims to provide the study of the provisions of the VCS. It provides a comparative study of the VCS in India with respect to four States i.e., Gujarat, Delhi, Telangana and Kerala, along with the CVCF Guidelines.

Evolution of Legal Framework of Victim Compensation in India

The Law Commission of India first acknowledged that the victims need to be given their share of rights in the then prevailing CJS, it submitted reports on CrPC, 1898, the 42nd Law Commission Report (LCR); the IPC, 1860 i.e., the 152nd LCR and the CrPC, 1973 i.e., (LCI 154th Report, [INDIA, 1996]) all of which dealt with providing justice to victims of crime and proposed reforms. Later the *Malimath* Committee (Malimath 2003) in its Report also delved into the aspect of justice to victims and urged the legislature to make laws to enhance the rights of the victims in the CJS in India.

The judiciary also drove the attention towards the plight of the victims, with the case of *Rattan Singh v. State of PB* (1979). It was pointed out by the Apex Court how the victims are neglected in the criminal jurisprudence and observed that these deficiencies can be rectified by the legislature keeping in mind the concept of Welfare State. In *Maru Ram's* case (1980) it was observed that the court should not overlook victimology. In *Hari Singh v. Sukhbir Singh* (1988) it was pointed out that the courts have failed in awarding

compensation to the victim u/s 357(1) and recommended to all the courts to “exercise the power u/s 357 liberally to meet the ends of justice”. The court said that it is a constructive approach and a step forward in the right direction. In the case of *State of Gujarat v. Hon’ble High Court of Gujarat* (1998) the SC reiterated that the victim and his family cannot be forgotten in our efforts to protect the accused. It recommended the States to make laws for setting aside some amount of the wages earned by the prisoners and pay that as compensation to the victims of crime, a fund can also be created for the same purpose.

The Apex Court had emphasized on setting up a “Compensation Board” exclusively for Rape victims in 1995 in the *Delhi Domestic Working Women’s Forum v. UOI* (1995). In *State of Gujarat v. Raghu @ Raghavbhai and Ors.*, (2003) the Gujarat High Court (HC) observed that though the life and dignity cannot be restored or compensated but financial assistance will bring some solace to the victim. The court also accorded role to the Legal Service Authorities (LSA) to enquire into the facts and circumstances before providing compensation.

Again, the Apex Court in *Mangilal v. State of MP* (2004), held that u/s 357, the power of the courts to award compensation is not ancillary to other sentences but in addition, and the difference between the provisions 357(1) and (3) is that, imposition of fine is a basic and essential requirement and that even when fine is not imposed then also the courts can direct the payment of compensation while exercising revisional powers (MURUGESAN; JANE, 2007). The SC in *Laxmi v. UOI* (2014) held that compensation should mandatorily be given to the victims of acid attack along with free medical treatment. (SHANTAGOUDAR, 2016).

The Kerala HC in *District Collector.. District Legal Service Authority Alapuzha* (2021) the question was whether the provisions relating to VCS are retrospective or prospective in application, i.e., should a victim of a crime, where the offence took place before December 31, 2009 be entitled to claim compensation u/s 357A (4)? The court held that although only procedural statutes are generally given a retrospective application in operation while the substantive statutes are prospective unless there is any express stipulation, and sec. 357A (1), (4) & (5) is a substantive law the provision as such will have a prospective application. The provision though a substantive provision, it is remedial in nature, for the welfare, benefit of the victim. Hence, when victim makes an application for any crime which occurred before the coming into force of sec. 357A a prospective benefit should be given.

The Calcutta HC addressing a similar question had held in *Piyali Dutta v. State of West Bengal and Ors.*, (2017) that – 357A is a “time neutral” legislation and does not distinguish between the victims of crime before or after the introduction of the section in the statute nor does it make any difference based on the time of occurrence. Hence, if there is any segregation done based on the time, it will be against Art. 14 guaranteed by the Const.

The CrPC, defines victim u/s 2(wa) which was a result of the amendment 2008. Sec. 357 was incorporated in the new code i.e., CrPC, 1973 where the court has to award compensation to victims in the interest of justice while passing the judgment. Sec. 357 incorporates the idea of punishing the offender like the criminal court would and make him compensate the loss as a civil court (KELKAR, 2020, p. 634). Compensation can only be ordered under this sec. when the accused is convicted of the offence and the court is passing the sentence. The amount can in no case exceed the sum imposed by way of fine and the sum of fine would be only up to the limit which can be awarded for any offence (KELKAR, 2020, p. 635).

In the year 2009 sec. 357A was introduced in CrPC by way of an amendment, which came into effect from December 31, 2009. Sub-section (1) of 357A provides that the States in coordination with the Centre must formulate appropriate schemes to award compensation to the victims and create a fund for the same. The trial court shall make recommendation for compensation to the LSA as per 357A (3) when it is satisfied that - a) compensation awarded u/s 357 is not adequate or b) when the cases end in acquittal or discharge and the victim is left in the lurch. Sec. 357A (2) empowered the District LSA or the State LSA to decide the quantum of compensation after due inquiry when recommended by the Court. In cases where the offender is untraced

or unidentified which leads to no trial, then also, the victim or his dependent may make an application to the State or District LSA seeking compensation u/s 357A (4). The LSA shall u/s 357A(5) after making due enquiry within 2 months award compensation. Under sub-section 6 of sec. 357A the LSA may make an order for – “immediate first-aid facility or medical benefits free of cost upon receiving the certificate from the police officer or Magistrate”, or may order any other relief as appropriate.

The scope of sec. 357 is very limited, although it is said to be in consonance to achieve the principles stated in the UN Declaration, 1985. It applies only when the accused is convicted and when fine forms part of the sentence (subject to recovery). The magistrate can order compensation. However, when fine is not a part of the sentence, the capacity of the accused needs to be considered. Sec. 357A tries to remove the shortcomings of its preceding section and provides for compensation when the accused is not identified or traced or apprehended. It gives a role to the State and District LSA, imposes responsibility on the States to compensate the victims in case where the compensation u/s 357 is inadequate. Hence, there is no harm in saying that sec. 357A tries to provide compensation to the victims and enhance its scope. But no legislation is beneficial until it is properly implemented and thus it is required to be studied whether this insertion was actually beneficial in its truest sense and that can be achieved after analysing the VCS devised by the States. The victim compensation fund is to be made by the States which consist of fees, fines, compensation amount recovered from offenders and budgetary support from the State/UT government and administration (INDIA, 2015).

An amendment was again introduced in the year 2013 by the Criminal Law (Amendment) Act, 2013. The 2013 amendment has inserted sec. 357B which provides that the compensation paid by the State under its preceding sec. will be in addition to the fine paid to the victim u/s 326A or 376D of Indian Penal Code (IPC). Sec. 357C states that all hospitals whether private or public, run by the Centre or the State or any other person, shall immediately provide the first-aid and medical treatment without any costs to the victims of sexual offences (sec. 326A, 376, 376A-D and 376E [Punishment of repeat offenders] of IPC) and shall inform the police immediately.

After a careful reading of the above provisions of CrPC it can be concluded that it is the duty of all the States to create a victim compensation fund for awarding compensation to all the victims of the crime in the particular State. In the case of *Suresh v. State of Haryana* (2015) the court made an observation that only 25 out of the 29 States (28 States as of 2019) had notified the VCS, and they only specify the maximum limit of compensation and thereafter it is the discretion of the District or State LSA to decide the quantum subject to the upper limit. It also pointed out that the “upper limit” of compensation decided by a few States were very low. Later on, considering this line of argument the Central Government had come up with guidelines in 2015 in the form of CVCF in order to address the issue of the disparity in quantum, which was later on again revised in 2017.

Central Victim Compensation Fund (CVCF) Guidelines

The Ministry of Home Affairs (MHA) on October 14, 2015 decided to set up a CVCF, which recommended the States to modify their VCS suitably and to speed up the implementation of the VCS in order to claim the financial support from the CVCF. The Guidelines were set-up by the Central government with a three-fold objective of supporting & supplementing the State/UTs VCS, to reduce disparities in quantum of compensation amount for the victims of similar crimes, and to encourage States/UTs to implement VCS u/s 357A especially for victims of sexual offences, rape, acid attacks, crime against children, human trafficking and etc.

The CVCF was set up with an initial budget of Rs. 200.00 crores out of the “*Nirbhaya Fund*” which was meant to look after the crime against women and to be supplemented with contributions made by the public. The CVCF provided that the funds shall be released to the States after the State government submit proposals for seeking financial assistance after the completion of the financial year. The Empowered Committee was

given the responsibility to either approve, reject or return the proposals. The empowered Committee after assessing the experience of CVCF recommend amendments in the guidelines.

Annexure 1 of the guidelines provided the minimum (min.) Amount of Compensation in a tabular form which ranged from 50 thousand rupees to three lakh rupees depending on the gravity of the injury. It also mentioned that if the victim is a minor below the age of 14 years of age, then the amount is to be increased by 50%. Annexure – II of the guidelines provided the Proforma for claiming the amount of compensation from the CVCF by the States, it is interesting to note that the proforma provides for 6 cases where the States can claim funds. These are cases of rape, other sexual offences, acid attacks, offences covered under the Protection of Children from Sexual Offences (POCSO), human trafficking and cross-border firing.

It was quite interesting to note that although the CVCF Guidelines 2015 provided for a provision to amend the guidelines after assessing its administration, but the amendment in the CVCF came quite early within 10 months of its coming into effect. By the letter dated July 13, 2016 the MHA introduced modification to the CVCF 2015 guidelines. This modification amusingly, made the initial grant of Rs. 200 Crore to a one-time grant instead of periodic grant. The new guidelines were called the “*Central Victim Compensation Fund Guidelines 2016*”, which came into force from July 06, 2016, with the same objectives but now restricted to a size of one-time grant of Rs. 200 Crore only. The activity of the CVCF was reduced to only obtain funds from MHA to supplement and support the VCS and provide special assistance to the victims of acid attack of Rs. 5 lacs. The States and UTs are now supposed to get a one-time grant, no contributions by the corporations or the public were to be made, the audit procedure was now subject to MHA. The minimum amount of compensation showed no modification. But every State was given a specific share from the fund, the summary of amount approved for the States and UTs are also provided in the guidelines.

Victim Compensation Schemes of the States - Gujarat, Delhi, Telangana & Kerala

As per sec. 357A the States had to devise their own VCS and create a victim compensation fund with the co-ordination of Centre. Each State has formulated a VCS. There are around 28 States and 8 UTs in India and Arunachal Pradesh, Bihar, Chhattisgarh, Karnataka, Delhi were amongst the first few States to notify the VCS in their States by 2011. States of Madhya Pradesh and Uttar Pradesh notified their schemes as late as 2015 and 2014.

Gujarat Victim Compensation Scheme

After 5 years of the 2009 amendment which introduced the sec. 357A in CrPC, the State of Gujarat had formulated a VCS. The Gujarat Home Department on January 05, 2012 framed the Gujarat Victim Compensation Scheme, 2013 (Gujarat VCS, 2013) for providing compensation to the victims or their dependents who had suffered and loss or injury and who require rehabilitation.”

The same was revised on January 02, 2016 superseding the previous scheme, by introducing the Gujarat Victim Compensation Scheme, 2016 (Gujarat VCS, 2016). Interestingly, the scheme made no mention of the CVCF. The next revision in VCS for the State of Gujarat was seen in the year 2019 which made it in alignment with the CVCF 2015. However, at this point of time CVCF 2017 had come into effect.

The Gujarat Victim Compensation Scheme, 2019 (Gujarat VCS, 2019) was issued by the Gujarat government on April 26, 2019 which superseded all the prior schemes. The scheme applied to victims their dependents, guardians and parents. It defines the term dependent under clause 2(d) as spouse, parents, grandparents, unmarried daughter and minor children, which is quite wide in scope; defined victim in 2(p) “as any person who has suffered any physical or mental harm as a result of any offence specified in the Schedule” including offences u/s 304B, 326A and 498A of IPC, including attempts and injury.

The Fund Constitutes of - CVCF contribution, Budget allocated by the State, amount ordered by civil/criminal tribunal, amount recovered as fine from victim and accused under clause (cl.) 9(8) and 14. As per cl. 4 victim can claim compensation from multiple schemes. There should be mandatory reporting of FIR and same shall be forwarded to the LSA under cl. 5, so that it can grant interim compensation. Clause 8 provides certain factors which need to be considered by the LSA while determining the claim such as the - gravity of offence, expenses incurred, loss of educational opportunity, employment, financial conditions, age, number of dependents etc. The scheme provides for the procedure and method of disbursement in cl. 9 & 11 respectively.

It is important to note that earlier there was no limitation period in the previous schemes, neither the CVCF talks about this, but the Gujarat government introduced the clause for a limitation period i.e., the application needs to be filed within 3 years from the date on which the crime occurred or the trial had concluded under cl. 17 and the LSA has the power to condone delay if satisfied by the reason reduced in writing.

Although the Gujarat VCS, 2019 has far-reaching and progressive provisions but the clause imposing a limitation period falls in way of a perfectly efficient scheme and makes it regressive. It allows the victims under cl. 18 to file for an appeal within 30 days if not satisfied with the compensation awarded.

Delhi Victim Compensation Scheme

The Government of Delhi on February 02, 2012 approved the compensation scheme i.e., the Delhi Victim Compensation Scheme, 2011 (Delhi VCS, 2011). Delhi was one of the first few States to come up with a scheme for the victims (Dube 2018). After the introduction of the CVCF, 2015 the Delhi administration modified their VCS in 2015. The reason as provided by the Delhi administration was that even after 3 years of the implementation of the Delhi VCS, 2011 it wasn't much of a success and could not garner as much attention and popularity as required. (Delhi VCS, 2015) Not only the application of the scheme needed to be simplified but the quantum also needed to be enhanced along with reframing the aspects of immediate and interim assistance and compensation to the victims. Delhi Victim Compensation Scheme, 2015 came to be effective from December 23, 2016.

Looking at the scheme and considering the objectives behind the amendment, it appears that the new scheme was more progressive in nature and sensitive in providing the procedure in detail, enhancing the amount of compensation and including a few new areas of offences. After the directions passed by the SC to all the State and UTs in the case of *Nipun Saxena v. UOI* on May 11, 2018 to implement the "Compensation Scheme for Women Victims/ Survivors of Sexual Assault/ Other Crimes" within their territory. This scheme was drafted and submitted by the National LSA on the orders of the court. The Delhi administration had again introduced an amendment in its VCS in 2018.

The Delhi Victim Compensation Scheme, 2018 (Delhi VCS, 2018) which came into force on October 02, 2018 was divided into two Parts – Part I which contained all offences and Part II which was specific to the women victims. Clause 2(d) defines dependent and includes spouse, parents, grandparents, daughter who is not married and minor children. Term victim is defined in clause 2(k) as – "a person who has suffered loss or injury". Clause 3 provides the composition of the "Victim Compensation Fund". Similar to the Gujarat VCS 2019, this scheme also provides for certain factors that need to be considered for determining the claim under cl. 8. Under clause 9 is the provision for declining the compensation but no reasons or grounds as such are mentioned. The payment shall be made *via* bank accounts as described in clause 12. It provides a limitation period of 3 years from the date on which the crime was committed or the trial concluded under cl. 17. Unlike the Gujarat VCS, 2019 it does not provide for any provision for making an appeal.

Telangana Victim Compensation Scheme

The State of Telangana came to be formed from June 02, 2014 with The Andhra Pradesh Re-Organization Act, 2014, the Inspector General of Police had submitted the proposal for the VCS after taking into consideration the number of cases registered in Telangana. The Government later came to frame a VCS which is the Telangana Victim Compensation Scheme, 2015 (Telangana VCS, 2015) which came into effect from April 01, 2015.

Clause 5 provides that the scheme shall apply only when the crime for which compensation is sought is committed in the territory of State of Telangana. The term dependent is defined under cl. 2(d) as – “wife, husband, father, mother, unmarried daughter and minor children” and victim under cl. 2(k) as – “a person who has suffered any loss and requires rehabilitation”. Clause 3 provides the “Victim Compensation Fund” which consists of fund from budgetary allocation, contribution, donations, grants made by organizations, philanthropists, institutions or any other source whatsoever. It does not however mention grants from the CVCF.

Clause 5(2) provides for the applicability of the scheme, the crime committed should be reported within 24 hours from the time the crime took place to the concerned authority. This provision is arbitrary since there are multiple reasons which lead to late reporting of the crimes by the victims. As per cl. 5(3) this scheme applies only to victims of families who have an annual income of not more than 4.5 lacs. The whole clause is unreasonable and worrisome, it defeats the purpose and objective behind the compensation law and the right of the need for rehabilitation of the victim. The scheme asks for a strict compliance of the provisions. The period of limitation under cl. 12 is only of 12 months as compared to the above studied schemes. As per cl. 13 an appeal can be filed within 90 days before the State LSA by the aggrieved person.

In place of making the application of compensation by the victims this VCS appears to be intimidating, cumbersome and difficult for the victims to even apply for compensation with not only complex procedure but strict restrictions. The purpose behind providing compensation was to achieve social justice. But imposing such harsh measures and eligibility criteria's throws the whole idea of social justice and rights of the victims outside the window. It appears as though the State wants to rescue itself and avoid the financial liability.

Kerala Victim Compensation Scheme

The government of Kerala while exercising its power u/s 357A CrPC, and in co-ordination with the Centre on February 24, 2014 made for the first time Kerala Victim Compensation Scheme, 2014 (Kerala VCS, 2014). The General Order dated November 05, 2017 published on November 20, 2017 in *Official Gazette* amended the Kerala VCS, 2014 to Kerala Victim Compensation Scheme, 2017. (Kerala VCS, 2017).

Clause 2(j) defines dependents which is similar to the Telangana VCS and cl. 2(i) defines victim as defined u/s 2(wa) CrPC. Clause 3 provides for the “Victim Compensation Fund” which constitutes of budgetary allocation, amount of fines – imposed u/s 357, donations and contributions, CSR, 1/3rd earnings by the prisoners convicted in jail. Clause 7 provides that the LSA can reject, withhold or reduce the amount on fulfilling certain conditions provided therein. One of the provisions which needs special mention is that as per cl. 4 in case where the crime is committed outside Kerala however, if the victim is found inside the boundary of the State then such person shall be eligible for interim compensation. Limitation period under cl. 9 is of 180 days. Under cl. 10 the aggrieved can be file an appeal with the LSA within 90 days and re-open a case where in finds that a grave injustice can occur if the amount is not enhanced or revised.

Comparison of the CVCF with the State VCS

The CVCF Guidelines were introduced by the Centre with the sole purpose of reducing the disparity in the amount or quantum which was decided by the States in their respective VCS. Although the nature of the

guidelines is such that it is not binding on the States, but to claim the amount allocated to each State, it was compulsory for the States to comply with the quantum mentioned.

Table 1 discusses the injuries or loss along with the quantum of compensation covered under the CVCF and the VCS of the States of Gujarat, Delhi, Telangana and Kerala.

Table 1
Quantum under CVCF and State VCS

Description of Injuries/Loss	Min. Amount under CVCF	Scale of compensation amount Gujarat VCS	Scale of compensation amount Delhi VCS, 2018	Maximum Amount under Telangana VCS, 2015	Min. Amount under Kerala VCS, 2017
Acid attack	Rs. 3	Rs. 3 – 8	Disfigurement of face -Rs. 3 – 7 More than 50% - Rs. 5 – 7 Injury less than 50% - Rs. 3 – 5	Rs. 3	More than 40% Rs. 3 Injury less than 40% Rs. 1
Rape	Rs. 3	Rs. 5 – 10	Rs. 3 – 5	Rs. 2	Rs. 3
Gang Rape	N/A	Rs. 5 – 10	Rs. 3 – 7	N/A	N/A
Physical abuse of minor	Rs. 2	N/A	Rs. 2 – 5	N/A	Rs. 2
Rehabilitation of victim of Human trafficking	Rs. 1	Rs. 0.50– 1	Rs. 1– 3	N/A	Rs. 1
Sexual assault (excluding rape)	Rs. 0.50	N/A	Rs. 4 – 7	N/A	Rs. 0.50
Death	Rs. 2	Rs. 5 – 10	Rs. 3 – 10	(Including dowry deaths) Below 40 years – Rs. 3 40-60 years - Rs. 2 Above 60 – Rs. 1	Rs. 2
Culpable Homicide not amounting to murder	N/A	N/A	N/A	N/A	Rs. 1.5
Causing death by negligence	N/A	N/A	N/A	N/A	Rs. 2
Dowry related violence	N/A	N/A	N/A	N/A	Rs. 2

Permanent disability (80%+)	Rs. 2	Rs. 2 – 5	Rs. 2 – 5	Below 40 years – Rs. 2 40-60 years - Rs. 1 Above 60 – Rs. 0.50	Rs. 2
Loss of limb or body part (40-80% permanent disability)	N/A	N/A	Rs. 1 – 3	N/A	N/A
Loss of limb or body part (20 – 40% permanent disability)	N/A	N/A	Rs. 0.50 – 2	N/A	N/A
Loss of limb or body part (below 20% permanent disability)	N/A	N/A	Rs. 0.20– 1	N/A	N/A
Description of Injuries/Loss	Min. Amount under CVCF	Scale of compensation amount Gujarat VCS	Scale of compensation amount Delhi VCS, 2018	Maximum Amount under Telangana VCS, 2015	Min. Amount under Kerala VCS, 2017
Partial disability (40-80%)	Rs. 1	N/A	N/A	Below 40 years – Rs. 1 40-60 years - Rs. 0.50 Above 60 – Rs. 0.25	Rs. 1
Fracture/ dislocations	N/A	N/A	N/A	N/A	Rs. 1.5
Burns (25%+) excluding acid attack	Rs. 2	Rs. 2 – 8	More than 50% - Rs. 5 – 7 Injury 20% - 50% - Rs. 2 – 5 Less than 20% - Rs. 1 – 2	N/A	Rs. 2 (Including less than 25% burns)
Loss of foetus	Rs. 0.50	Rs. 2 – 3	Rs. 2 – 3	N/A	Rs. 0.50
Loss of fertility	Rs. 1.5	Rs. 2 – 3	Rs. 2 – 3	N/A	Rs. 1.5
Grievous injury including injury resulting in surgery or serious damage to vital organs	N/A	N/A	Rs. 0.50– 2	N/A	Rs. 2 (Does not mention nature of injury i.e., simple or grievous)

Loss or injury causing severe mental agony to women and child victims – Human Trafficking, Kidnapping, Molestation and etc.,	N/A	N/A	N/A	Rs. 0.50	N/A
Major injuries not otherwise specified	N/A	N/A	N/A	N/A	Rs. 1
Minor injuries not otherwise specified	N/A	N/A	N/A	N/A	Rs. 0.50
Rehabilitation (including above)	N/A	N/A	N/A	N/A	Rs. 1
Woman victims of cross border firing-	N/A	N/A	N/A	N/A	Rs. 2
Age of victim	14 years or less – additional 50%	18 years or less – 50% additional	18 years or less – 50% additional	N/A	14 years or less – additional 50%

#Figure indicated in lakhs

* N/A – Not Available

For almost all offences the Gujarat VCS, 2019 is in accordance with the CVCF guidelines except that it does not include the injuries sustained by the minor in cases of physical abuse, sexual assault excluding rape and partial disability arranging between 40-80%. The quantum for “Rehabilitation of victim of Human Trafficking” which is Rs. 50,000 at minimum in place of being Rs. 1 lac. The Gujarat VCS, 2019 provides an upper limit also, which limits the LSA to amount the compensation within the limit specified even in case where the victim requires more amount than specified.

Whereas, the Delhi VCS, 2018 appears to be more progressive than the CVCF guidelines in terms of the number of injuries included and the amount of compensation. It categorizes offences of acid burns, permanent and physical disabilities according to the severity of the injury sustained, this helps to provide more clarity in the scheme designed for quantum of compensation.

The Telangana VCS, 2015 does not comply with that of the CVCF in terms of quantum and minimum amounts at all. It provides for the maximum limit up to which the LSA can award the compensation, unlike providing for a minimum amount or a range as in the other VCS. The procedure for deciding the amount is based on the age of the victim, it is divided into three categories people below 40 years, between 40-60 years and above 60 years, the amount varies amongst these age groups and offences.

And the Kerala VCS, 2017 is also in line with that of the CVCF. It also provides compensation for the offence of “culpable homicide not amounting to murder”, causing death by negligence, rehabilitation including other injuries already mentioned, fractures, dislocations and specifically provides for dowry related offences which is not seen in the CVCF or the State VCS of Gujarat, Delhi and Telangana.

Table 2 depicts the compliance of the VCS of the four States with that of the CVCF –

Table 2
Compliance of the VCS as per CVCF

CVCF	Gujarat	Delhi	Telangana	Kerala
Quantum	Partially Yes	Yes	No	Yes

Comparison of the Victim Compensation Schemes of Gujarat, Delhi, Telangana and Kerala

A comparative study between the VCS of the States of Gujarat, Delhi, Telangana and Kerala is done to identify the areas where there lacks uniformity within the VCS devised by these States. The comparative analysis will also help to identify the disparities amongst these schemes and help in suggesting measures for the removal of the ambiguities in order to provide the victims an effective, efficient and uniform method for claiming compensation across the country. The table 3 provides the clause-by-clause analysis of the VCS for the States of Gujarat, Delhi, Telangana and Kerala –

Table 3
Provisions under The VCS of Gujarat Delhi Telangana and Kerala

Provisions	Gujarat	Delhi	Telangana	Kerala
Victim -	Person who has suffered mental/ physical injury (including offences under sec. 304B, 326A, 498A) attempt and abetment.	Person who has suffered loss or injury and in case of death shall include legal heir and guardian.	Person who has suffered loss or injury and includes guardian or legal heir	As defined u/s 2(wa) of CrPC.
Dependent	Wife, husband, father, mother, grandparents unmarried daughter, minor children and such person as determined by LSA on report of Div. Magistrate, SHO/IO etc.,	Wife, husband, father, mother, grandparents unmarried daughter, minor children and such person as determined by LSA on report of Div. Magistrate, SHO/IO etc.,	Wife, husband, father, mother, unmarried daughter, minor children and such person as determined by LSA	Wife, husband, father, mother, unmarried daughter, minor children and such person as determined by LSA
Victim Compensation Fund (composition)	Contributions from CVCF, Budgetary allocation, amount ordered by civil/ criminal tribunal, recovered by fine (under the scheme), donations and contributions, CSR	Budgetary allocation, fine imposed u/s 357 CrPC, amount recovered by fine (under the scheme), donations and contributions, CSR	Budgetary allocation, grants, donations and contributions, sum received by any other source.	Budgetary allocation, fine imposed u/s 357 CrPC, amount recovered by fine (under the scheme), donations and contributions, CSR, 1/3 rd earnings by convicts in jail

Eligibility for Compensation	Victim or dependent also eligible to claim compensation from other schemes.	Victim or dependent – have not received compensation under any other scheme	recommendation made by court u/s 357A CrPC, on satisfaction that compensation u/s 357 is not adequate, cases end in acquittal or discharge or offender is not traced or identified, no trial takes place, victim/dependent to co-operate with police& prosecution during investigation and trial.	Victim or dependent – when recommendation made by court u/s 357A CrPC, offender is not traced or identified, no trial takes place, crime should take place within territory of State, (if occurred outside State victim eligible for interim relief u/s 357A (6)).
Application of Scheme	<i>Not Available</i>	<i>Not Available</i>	1. Crime to occur in Telangana, 2. should be reported by victim/dependent to the police or Executive/Judicial Magistrate within 48 hours from occurrence of crime, 3. Applies to families with income less than 4.5 lacs p.a., 5. Employees of State/ Centre Govt., Boards, Corp., Public undertakings and Income Tax Payees are not eligible.	

Procedure for Making Application -	1. Mandatory registration of FIRs, use of technology and e-gujcop. 2. suo-moto or preliminary inquiry for interim relief by LSA, 3. Victim/ dependent/ SHO can file for interim/final compensation before LSA along with copy of FIR/ Compliant and Medical Report, Death Certificate, Judgement	Victim/ dependent/ SHO can file for interim/final compensation before LSA along with copy of FIR/ Compliant and Medical Report, Death Certificate, Judgement.	<i>Not Available</i>	<i>Not Available</i>
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Provisions	Gujarat	Delhi	Telangana	Kerala
Jurisdiction	1. State or District LSA, Can be submitted online, 2. Secretary along two officers to decide the claim 3. for acid attack – Criminal Injury Compensation Board shall be deciding authority	Delhi State or District LSA	<i>Not Available</i>	<i>Not Available</i>
Disbursement	1. via Bank Account, 2. full disbursement of interim amount, 3. final compensation -(75% shall be put as fixed deposit for min. 3 years & 25% for utilization by victim), 3. for minor – 80% to be put as fixed deposit and withdrawal only after majority, 4. interest on fixed deposit to be credited on monthly basis to victim	1. Nationalized or Scheduled Bank, (75% shall be put as fixed deposit for min. 3 years & 25% for utilization by victim) 2. for minor – 80% to be put as fixed deposit and withdrawal only after majority, 3. interest on fixed deposit to be credited on monthly basis to victim	1. through Scheduled Bank, 2. for minors – fixed deposit & withdrawal only after majority except in certain cases,	1. Through Nationalized Bank account, 2. for minors – fixed deposit & withdrawal only after majority except in certain cases,

Procedure for Grant of Compensation	1. LSA to prima facie satisfy itself for the needs and identity of victim for interim compensation, 2. for final compensation – verify contents of claim and call for information, 3. enquiry u/s 357A (5) to be completed within 60 days, 4. Mob-Lynching – payment within 30 days, mandatory FIR, 5. institute proceedings for recovery of compensation, 6. cases under Motor Vehicles Act, Fatal Accident Act, Employees Compensation Act and Railways Act are not covered, 7. institute proceedings for recovery of compensation, (cl. 14)	1. LSA to examine and verify contents of claim and call for relevant info. 2. enquiry u/s 357A (5) to be completed within 60 days, 3. cases under Motor Vehicles Act not covered, 4. institute proceedings for recovery of compensation. (cl. 15)	1. LSA to verify contents of claim, call for information, conduct enquiry, decide quantum and award compensation within 2 months, 2. Take into consideration the trauma undergone by <i>Victim of Commercial Sexual Exploitation and Trafficking</i> (VOCSET), 3. cases under Motor Vehicles Act not covered, 4. institute proceedings for recovery of compensation (recovered at rate of 12% interest p.a., collect as arrears of land revenue) cl. 9.	1. conduct enquiry and award compensation within 2 months, 2. examine and verify content, call for information, 3. paid in single or lump-sum, 4. cases under Motor Vehicles Act not covered, 5. institute proceedings for recovery of compensation,
Factors to be considered for grant of compensation	Provided in cl. 8 of the scheme	Provided in cl. 8 of the scheme	<i>Not Available</i>	<i>Not Available</i>

Provisions	Gujarat	Delhi	Telangana	Kerala
Rejection or reduction of claim	<i>Not Available</i>	LSA may decline compensation giving reasons reduced in writing. <i>*No criteria mentioned.</i>	<i>Not Available</i>	When – 1. applicant fails to inform Police officer without reasonable delay, 2. fails to co-operate with police 3. fails to give reasonable assistance 4. found not eligible
Interim Relief to victim	Provided in cl. 12. (5,000 or 10,000 as the case maybe)	Provided in cl. 13. (not more than 50,000)	<i>Not Available</i>	<i>Not Available</i>
Medical Relief	<i>Mukhyamantri Amrutam</i> Scheme and free medical treatment	Free medical treatment from Government Hospital	<i>Not Available</i>	<i>Not Available</i>
Limitation	3 years from occurrence of crime or conclusion of trial. LSA may condone delay	3 years from occurrence of crime or conclusion of trial.	12 months from occurrence of crime LSA may condone delay	180 days (6 months) from occurrence of crime LSA may condone delay
Appeal	Within 30 days before District LSA	<i>Not Available</i>	1. Within 90 days before State LSA 2. LSA may condone delay 3. Dispose of appeal within 90 days	1. Within 90 days before State LSA 2. LSA may condone delay 3. can re-open a case when there is material change in medical condition of victim.

On a comparative analysis of the VCS of the four States, it can be concluded that there are disparities within the schemes. The CVCF remains silent on many aspects related to the Procedure of application, grant, applicability of scheme, limitation period, appeal, rejection of claims, medical reliefs, interim relief and the like.

The non-uniformity amongst the schemes is quite evident. The Gujarat VCS, 2019 is more like a replica of Delhi VCS, 2018, which support the idea of bringing uniformity in the schemes of all the States. While Telangana VCS, 2015 lacks behind and on examining the VCS of the State of Telangana, the history, purpose, objective and rationale behind implementing the VCS and examining the provisions of sec. 357A CrPC, CVCF, VCS for Gujarat and Delhi and the multiple judicial decision when compared with the Telangana VCS, it can be concluded that the scheme requires to be fine-tuned with the intent and purpose of providing

compensation the victims. It also does not comply with that of the CVCF in terms of quantum and minimum amounts.

Along with that there are certain provisions and clauses which appear to be arbitrary and unfair in nature. The following are discussed below-

1. Quantum - There are generally two ways to award compensation, either minimum which includes a basic amount to cover the losses or in full, which means to completely rehabilitate and aid the victim. The first approach is mostly adopted by the developing countries (NAMBIAR, 2011). India is a developing country with a large population of poor and marginalised section hence a model where an upper limit is provided is desirable, but there is scope of development in the structure of the Indian society and though this idea is progressive but the States should aim at the removal of the upper limit and compensate the victims in toto.

The CVCF remains silent whether the States should decide any upper limit. The amount varies in the VCS of the States in the sense that some prefer setting a range (upper and lower limit) while others have only mentioned the maximum amount up to which the compensation can be awarded.

2. Limitation Period - All the VCS discussed above provide for a clause of limitation period, the claim of compensation should be made within a certain period after which the claim will be barred. The limitation period in the four VCS is different and ranges from 6 months to 3 years. Is providing for a limitation period in a social legislation justified? Specifically, when for making good the loss of a person who has suffered harm. Is the limitation period in tune with the sec. 357A CrPC? The clause of limitation period in the VCS can render the sec. unworkable and also defeats the purpose for enacting such a provision, it brings us back to where we started. This approach actually take backs what has been provided under sec. 357A unconditionally. The imposition of limitation period can be considered as something which is a colorable exercise of the power by the executive which is in direct derogation of the unqualified rights as provided under section 357A. In the current analysis, where the range of limitation period ranges from 6 months to 3 years, there are many instances and very common under the Indian CJS that the investigation of the cases is not completed within the stipulated time, while the law also does not provide any prescribed limitation of time within which investigation should be completed and to award compensation under the provision of sec. 357A when the offender is not identified or traced, the investigation needs to be completed. The time limit from the date of commission of the crime will only defeat the purpose of crime and goes against the spirit of sec. 357A (4) also.

The similar question was brought before the Kerala HC for consideration in *District Collector v. District Legal Service Authority Alapuzha* (2021) but the Court had only pointed out that it is a matter of consideration for the legislature and the State shall contemplate further to bring in modification in the Kerala VCS. Each State should reconsider the inclusion of the limitation period, however, the Gujarat VCS, after its amendment in 2019 has freshly introduced the period of limitation of 3 years, instead of going forward with the other provisions this is one step back, in other words holding the scheme to be entirely effective. The Centre can also include certain directions for same either by way of guidelines or other.

3. Exclusion of certain classes - there are certain classes of persons exclude from the scheme, such as families earning above a certain annual income and the people working with the Central or State Government or institutions. These are the criteria's where the victim or his family cannot claim the compensation, being a socially beneficial legislation, such criteria hamper the objective of victim justice, and is also against the freedom of equality enshrined in the Const.

4. Reporting of crime - The provision which provides for a time period within which the victim needs to report the crime to the police or Magistrate to claim compensation for instance, the Telangana VCS under cl. 5 provides a period of 48 hours within which the victim should inform the commission of a crime from the time of its occurrence to become eligible to claim compensation as per the scheme, which as discussed above is arbitrary. This cl. is arbitrary since there are multiple reasons due to the cases are reported late such as – societal pressure, mental trauma and agony which leads to losing rationality of the mind, lack of reflexing thinking to report the crime.

5. Procedure - The procedure for application should be simplified and mentioned in the scheme itself and to be made uniform, the documents required and the mode of application should be laid out in detail in the VCS in order to simplify the procedure for claiming compensation, in cases where an injury certificate is required by the police officer to claim the compensation, in order to simplify this the FIR can contain a separate clause with respect to the injury caused also, and the same can be forwarded to the LSA in order to provide interim compensation to the victim immediately. Since the Police is generally the first point of contact, they should be sensitized towards this and can be helpful in claiming immediate relief or interim compensation.

6. Extra care for minor - Not all the schemes cover the extra aid and facility which a minor requires, for the minor is in a vulnerable position and unable to express the needs, Gujarat and Delhi VCS provides that the minor can avail and additional 50% of the compensation amount of what is mentioned in the schedule, but the same sensitivity is lacking in Telangana and Kerala.

7. Rejection of the application or award or compensation - This provision also has a negative impact on the idea of imparting justice, also it is observed that the grounds/ factors for rejecting the application for compensation or denying compensation have not been laid down in the VCS of the States, or provided u/s 357A nor does the CVCF mentions it. It is entirely a discretion of the State and more importantly the discretion of the LSA. A provision like this needs to be remedied by its removal. Even if a compensation claim is denied it should be on the grounds where the victim fails to co-operate with the police or during the prosecution or if the victim is himself hand in glove with the offender.

8. Composition of the fund - To make the VCS more transparent the composition of the fund and the grants received, funds collected should be provided clearly, as of now only the areas from where the money will come has been mentioned but there is no mention of the amount. The schemes have also not mentioned the contribution made by the CVCF. This lack of clarity questions the fate of the VCS. The victim compensation fund should be adequately funded and maintained by the State. The allocation of the fund annually by the State Finance Ministry should be announced in public.

9. Factors which need to be considered by the LSA for awarding the compensation should be laid down and the same should be informed to the victim in order to satisfy the victim and assure him that the amount is decided on a fair basis, this will in return also provide a sense of justice to the victim.

10. Appeal - The Delhi VCS does not provide for the procedure of filing an appeal in case where the victim is not satisfied with the amount of compensation, 3 out of 4 VCS retains the provision for filing appeal which is required in order to extract the best out of it.

Conclusion

Victim compensation gives the victim a voice. Acknowledging victim rights in the form of compensation is just one step in the direction towards adopting a victim - friendly approach in the CJS. Victimology which has gained impetus again in the modern CJS. The States have realised that the Cinderella of the CJS i.e., the victims are the most important asset and need to be given a stake during the criminal procedure in order to ensure justice. Victim compensation was identified as one such method of providing assistance and aid to the victim of crime. Along with other support services, victim compensation finds its place in almost all the legal systems and jurisdictions across the globe.

India, is still pulling out all the stops to make victim compensation a major part of the CJS along with the other victim assistance. A lot more needs to be done; an extra mile needs to be covered. Section 357A has become a part of the criminal procedure directing the States to frame a VCS and create a victim compensation fund. A law on victim compensation is the least that a social welfare State can provide to the innocent victims of crime to protect their dignity in an exploitative society (VIBHUTE, 2004, p. 369).

For the victim compensation programme to be successful there needs to be a proper funding program, and as was pointed out by Professor Menon without a substantial fund which will be constantly depleting, there

cannot be any meaningful compensation, especially for a country like India given its demography and the number of crimes committed (VIBHUTE, 2004, p. 364). He also suggested in the year 2004 that the Compensation Fund should be at the least 500 Crore which should grow at a rate of 100% annually. But even when the CVCF was introduced in the year 2015 the initial corpus was set to be 200 crore which became a one-time grant from the Centre without specifying the cause, the Centre seems to have done away with its responsibility and put it entirely on the States.

Even if the CVCF grant is excluded the State victim compensation fund does not provide for the amount or corpus with which it started and does not mention the contributions from the State annual budget or the other sources. No transparency in the fund and in fact lacking an adequate fund is one of the reasons where effective VCS is lacking. No doubt that the amount of compensation payable is a domain of the State and it shall decide so based on its wealth and the legitimate claims of the victims, the victims right to compensation is a “qualified right”.

Since the States are given the responsibility to formulate the VCS for their own States, they have on their own discretion done the same and need to be given due credit. But due to the different VCS of different States there is ambiguity, perhaps the language and wording of the provision in the CrPC can be modified in a manner to provide more clarity. In other words, sec. 357A can be re-worded and amended to allow the Centre to frame a VCS for all the States which shall be a common VCS, which the States are supposed to implement and award compensation out of their own pockets, the rationale behind the suggestion to introduce such an amendment is due to the fact that the quantum is the most important aspect in a VCS, the Centre in order to remove the disparity in the quantum had come up with the CVCF Guidelines and had directed all the States to comply with the same. Hence, it becomes simpler when the Central Government formulates a Scheme and the States are supposed to implement it just like how the CJS works in the country. The type of victim, type of injury, type of offence and mode can still be left for the States to modify in accordance with the public interest.

The justification behind why the States were empowered to frame the VCS were outlined in the judgment of *State of Gujarat .. Raghu* (2003) by the Gujarat HC, that State is system of rulers and the ruled, politically understood, territorially occupied, seeking conferment powers, effective maximization of individual interest and social welfare of those ruled. This purpose is achieved by the promulgation and enactment of laws and by the exercise of the power-seeking obedience to those laws. However, if the law does not give the outcome which was desired then the State has to assume the accountability for the loss, harm, damage caused to the law abiding due to the act of the disobedient. With this assumption of power, the State deprived the right of the individual of private revenge or reflex action or saving us from reverting to the law of jungle. Thus, it is a contractual obligation and if the State fails in its role of protecting the law abiders it is meant that the State has broken its agreement with the individual and should be liable for the damages. This is one rationale for the compensation programmes where the citizen has a right to claim compensation from the State for its failure to protect him/her. And hence the State can decide which offences it shall compensate for, the type of injury and what victims.

Another rationale is the welfare theory born from the assumption that the Government machinery functions for the people, hence the States have a humanitarian duty towards the poor, sick, unemployed, vulnerable and the victims of crime also.

Providing the victims with adequate assistance and services is the clarion call and duty of the States, there needs to be suitable provisions and trainings for victim assistance programs. The objective behind this research paper was to study whether the scope of sec. 357A can be further expanded in terms of its application to assist the victims, sec. 357A for this purpose only talks about compensation to the victims of crime. Is awarding compensation enough, the Gujarat HC in its judgment had suggested that adequate provisions should be made for the providing proper assistance to the victims of crime and should include the following –

- a. a. Victim impact statement,

- b. Creating wounds amongst crime victims, their families and dependents,
- c. Provide counselling to a victim who has sustained serious psychological impairment,
- d. Adequate mechanism for legal aid.

The victims also require other types of assistance, including medical, psychological and legal, the CrPC Amendment Act, 2013 had introduced sec. 357B and 357C, where in the sec. 357B said that the compensation payable by the State under sec. 357A shall be in addition to the fine payable in the sec. of IPC and sec. 357C talks about immediate medical support from the Centre or State government hospital or local body or any other person for medical treatment or first aid, free of cost to the victims and shall also immediately inform the police.

However, sec. 357B & C is limited to only certain offences but the same should be extended to at least all the offences mentioned in the VCS, although the VCS of the States provide provisions for urgent medical needs and interim relief but there is no direct provision for the treatment offered from the Hospitals to the victims falling in the VCS. Hence this assistance should be included under the ambit of sec. 357A to extend its scope and applicability. The VCS does not mention any kind of mental or psychological aid and assistance, a crime not only impacts the body but also the mind, what is requires is there should at least a preliminary mental health check-up and assistance to aid the victim in the further course of his/her life.

The VCS remains silent on the aspects of proper legal aid, since the application procedure for compensation requires multiple documentation and the procedure is complex, there is a need for having a competent and aware legal assistance, this should be the first requirement which should be addressed. Hence the provision 357A on compensation law is silent on various aspects and this leads to ambiguity and disparities on many levels, and monetary compensation is not enough, it is important and mandatory but not enough and sufficient to satisfy the thirst of justice to victims. The law is fragmentary and is not adequate to compensate the victims of crime and lacks awareness.

It is thus desirable that there is separate legislation on victim compensation and assistance and not just a single provision under the criminal procedure carrying the load on its shoulders, aiming to achieve social justice and looking after all the victims of crime. A comprehensive legislation should be enacted for providing fair treatment and assistance to the victims and adequate compensation to the victims by the Centre as a uniform code which will eliminate all the disparities, ambiguities and confusion created by a number of laws and loosely drafted provision, which should be implemented by the States and funded out of their own pockets.

Recently, the MHA, Government of India has constituted a Committee for Reforms in Criminal Law to undertake the review of the criminal laws, and it can be assumed that the committee shall take into consideration the plight of the victims and the upgradation of the law of compensation for the victims of crime and other support services. It therefore humbly suggested to the committee to draft a holistic and separate legislation which can be adopted by the Centre for an effective and uniform VCS through-out the country and can be further implemented by the States out of their own Victim Compensation Fund u/s 357A of CrPC.

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Notes

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Victim compensation schemes in India (Gujarat, Delhi, Telangana and Kerala)*

O programa de indenização das vítimas na Índia (Gujarat, Delhi, Telangana e Kerala)

Sistemas de compensación a las víctimas en la India (Gujarat, Delhi, Telangana y Kerala)

Le programme d'indemnisation des victimes en Inde (Gujarat, Delhi, Telangana et Kerala)

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