

VICTIM'S RIGHT TO REHABILITATION: INDIA, UK AND US EXPERIENCE

Barcelona Panda¹

The article proposes to examine the prevailing legal framework in India in regard to Victim's rehabilitation and compares how far the existing standards conform to the international norms and standards, with special emphasis on US and UK scenario. It notices relevant judicial dicta that are sought to render the Victims, a right to rehabilitation and suggests changes that are required in order to make the system respond effectively to the needs of Victims of crime.

"We believe that to break the cycle of re-offending, we need to work out measures including rehabilitation programmes and support to the offenders and even their families."

-Report of the Committee on Reforms of Criminal Justice System²

Introduction

Indian Legislature and Judiciary have not defined 'Victim of crime' anywhere. In this regard, reliance can be placed upon United Nations General Assembly Declaration of Basic Principles of Justice for Victim and Abuse of Power adopted in November 1985, which through Articles 1 & 2 give exhaustive definition of the phrase.³ On the other hand, Rehabilitation means to restore to useful life, through therapy and education or to restore to good condition, operation, or capacity. The assumption of rehabilitation is that people are not permanently criminal and that it is possible to restore a criminal to a useful life, to a life in which they contribute towards themselves and the society. Goal of rehabilitation is to prevent habitual offending, also known as Criminal Recidivism.⁴ The rights of an accused or a convict, are well safeguarded both by the Constitution and other laws of the country which have often been discussed and debated at

¹ Final Year Law Student, Hidayatullah National Law University, Raipur (India)

² Para 23.3

³ **Article1.** "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

Article2. A person may be considered a Victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the Victim. The term "Victim" also includes, where appropriate, the immediate family or dependants of the direct Victim and persons who have suffered harm in intervening to assist Victims in distress or to prevent victimisation.

⁴ Rehabilitation (penology), available at: [http://en.wikipedia.org/wiki/Rehabilitation_\(penology\)](http://en.wikipedia.org/wiki/Rehabilitation_(penology))

various forums, but in all these, there has been hardly any reference to the "Rights" of the Victims of crime towards rehabilitation.

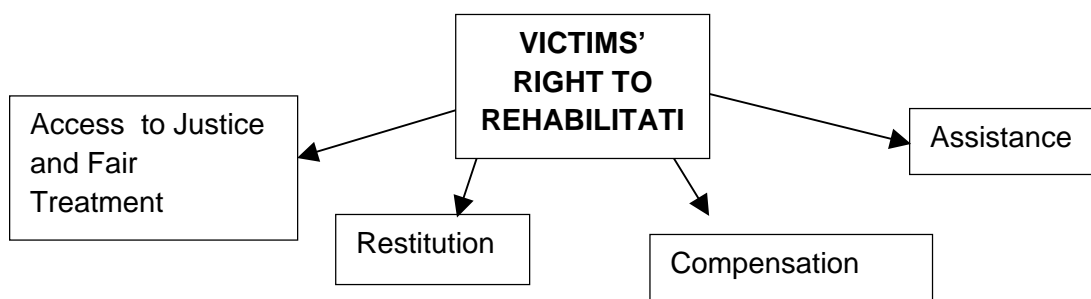


Figure: The various modes of Right to Rehabilitation

Compensation

Compensation to Victims of crimes can be awarded by Courts under Section 357 of the Criminal Procedure Code, 1973(Cr.PC) from the fine recovered as part of the sentence. In 2009, Section 357A was added to the Cr.PC, under which each State Government, in coordination with the Central Government, is required to formulate a scheme for compensation to Victims of crime or their dependants. Under this, a Victim can get compensation for rehabilitation in cases in which the Court finds it necessary. The compensation can be recommended even in cases where the trial ends in acquittal or discharge, provided there is a need for rehabilitation of Victims. Compensation can also be granted where no trial takes place because the offender cannot be identified or traced but the Victim requires rehabilitation. Thus, while under Section 357 Cr.PC, a Victim is entitled to compensation only on conviction, compensation under Section 357A is not necessarily linked to conviction. From the information available, States are in the process of preparing such a scheme. A Victim of crime has hardly any guaranteed right except may be of getting some assistance by way of payment of compensation, but even here the statutory provisions are grossly inadequate. These provisions suffer from inherent limitations also about the extent of fine, capacity of the criminal to pay and the like.

Under the Probation of Offenders Act, 1958⁵ while releasing an accused on probation or with admonition, the Court may order the offender to pay compensation and cost to the Victim.

Similarly, Section 250 (compensation for accusation without reasonable cause), Section 357⁶ (order to pay compensation out of fine or even without a sentence of fine), Section 358 (compensation up to Rs 100 to persons groundlessly arrested) and Section 359 (order to pay cost in non-cognisable cases) of Cr.PC, 1973, provide for payment of compensation and costs to the Victims of crime under different circumstances. Section 358 of the Code, provides for a small compensation payable to an illegally arrested person by any other person who causes a police officer to arrest him. What is noteworthy is that a prosecution is the *sine qua non* for an order of compensation. Thus, if there is no prosecution or no sentence, there can be no compensation.⁷ Similarly, compensation may be paid at the sentencing stage to persons who are, under the Fatal Accidents Act (13 of 1855), entitled to recover damages from the convict.

Some Other Rights To Rehabilitation

- **Reparation:** Reparation is arguably the most comprehensive means of compensating individuals and groups whose rights have been violated. Reparation acknowledges that serious wrongs have been done and, consequently, that the injured person is entitled to remedy and redress.⁸ Reparation is commonly associated with paying monetary compensation. While this form of compensation is an important means to offset damages suffered, India should not overlook other, non-monetary, forms of reparations. According to the Basic Principles and Guidelines, reparation includes “restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.”⁹
- **Victim Assistance:** Apart from compensation, Victim assistance seems to be a dire necessity for Victim rehabilitation. This would include, but is not limited to, the following services like Crisis intervention, Counseling, Emergency shelter, Criminal justice advocacy and Emergency transportation.¹⁰

⁶ Section 357 empowers the Court imposing the sentence to order the whole or part of the fine, if any, imposed to be applied in the payment to any person of compensation for any loss or injury caused by the offence, provided such compensation is recoverable in a civil Court.

⁷ Dr. Justice A.S. Anand, ‘*Victims of Crime - the unseen side*’, (1998) 1 SCC (Jour) 3

⁸ Theo van Boven, ‘*The Perspective of the Victim in The Universal Declaration of Human Rights: Fifty Years and Beyond*’ 14 (Yael Dnaeli et al. eds., Baywood Publishing Co. 1999).

⁹ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, annex, U.N. Doc. A/RES/60/147 (Mar. 21, 2006) ¶ 18.

¹⁰ ‘*Victims of Crime Act Crime Victims Fund*’ available at:

- **Right to engage an Advocate of his choice:** The Court is empowered to permit the Victim to engage an Advocate of his choice to assist the prosecution under Section 24(8).
- **Right to prefer an appeal:** The Victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.¹¹
- In addition to bolstering monetary reparations for Victims, a new legislation should also address other needs of Victims, including medical and psychological care, economic care, immediate protection and security, and long-term rehabilitation.¹²

Rehabilitation For Victims of Crimes- *Special Cases*

Rehabilitation of Victims of Custodial crimes

The constitutional right of a Victim of custodial crime to receive compensation was reiterated by the Supreme Court in *Nilabati Behera v. State of Orissa*.¹³ The Court pointed out that it was not enough to relegate the heirs of a Victim of custodial violence to the ordinary remedy of a civil suit. The right to get relief in public law from Courts exercising their writ jurisdiction was explicitly recognised. Further in *D.K.Basu v. State of West Bengal*¹⁴, the Court explained that “the award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the Victim or the heirs of the deceased Victim with respect to the same matter for the tortuous act committed by the functionaries of the state... the relief to redress the wrong from the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them.”¹⁵

Rehabilitation of Sexually Assaulted Women

¹¹ https://www.ncjrs.gov/ovc_archives/factsheets/cvfvca.htm
¹² Section 374 (20 and (3) of the Code of Criminal Procedure, 1973
¹³ Subhradipta Sarkar, ‘*The Quest for Victims’ Justice in India*’, available at: www.wcl.american.edu/hrbrief/17/2sarkar.pdf
¹⁴ (1993) 2 SCC 746.
¹⁵ (1997) 1 SCC 416.
¹⁶ Id. At 443; *State of A.P. v. Challa Ramakrishna Reddy* (2000) 5 SCC 712.

In India, the National Commission for Women has proposed a Criminal Injuries Compensation Board for the payment of compensation to Victims of Rape. This proposal has been done on the Directives issued by the Supreme Court of India in the case *Delhi Domestic Working Women's Forum Vs. Union of India and others*,¹⁶ which directed the National Commission for Women to evolve a “scheme so as to wipe out the tears of unfortunate Victims of rape” The Supreme Court observed that having regard to the Directive principles contained in the Article 38(1) of the Constitution, it was necessary to set up Criminal Injuries Compensation Board wherein compensation for Victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board shall take into account the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth, if this occurs as a result of rape.¹⁷ While compensation under Section 357A Cr.PC is general in nature and covers all crimes, this scheme is meant specifically for rape victims.¹⁸

Rehabilitation of Torture Victims

India's National Human Rights Commission encourages the right to rehabilitation for torture survivors. Chaired by a former Supreme Court Justice, the National Human Rights Commission reviews human rights violations, such as torture, and recommends relief and a measure of justice through the local state governments. It has sometimes recommended fining the police authorities and the responsible police station to provide the funds needed for rehabilitation and other compensation for injuries. Although this system does eventually fund some rehabilitation, it results in long delays while verdicts are achieved and compensation collected.¹⁹

International Perspective Towards Victim Rehabilitation

The UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power constituted an important recognition of the need to set norms and minimum

¹⁶ Writ Petition (CRL) No.362/93

¹⁷ “Scheme for relief and Rehabilitation of Victims of Rape, 2005”, available at: <http://www.ncw.nic.in/schemeformrehabilitation.pdf>

¹⁸ ‘Rehabilitation of Sexually Assaulted Women’, Press Information Bureau, Press Release, 03-March-2011, available at: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=70465>

¹⁹ ‘Human Rights & Human Rights Instruments in India’ available at: http://www.hrdc.net/sahrdc/resources/hr_instrument.htm

standards in international law for the protection of Victims of crime.²⁰ The UN Declaration recognised four major components of the rights of Victims of crime- Access to justice and fair treatment²¹, Restitution²², Compensation²³ and Assistance²⁴. This declaration is the *magna carta* of the rights of Victims globally. The declaration has made certain suggestions for dealing with the problems of Victims of crime including Victims of abuse of power. Some of the suggestions which deserve a special note are:

- a) Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to promote redress, as provided for by national legislation, for the harm that they have suffered.
- b) Judicial and administrative mechanisms should be established and strengthened where necessary to enable Victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
- c) Informing Victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information.
- d) Allowing the views and concerns of Victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected without prejudice to the accused and consistent with the relevant national criminal justice system.
- e) Providing proper assistance to Victims throughout the legal process.
- f) Taking measures to minimise inconvenience to Victims, protect their privacy where necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation. Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to Victims.

A right to health care for survivors of torture is explicitly stated in the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT) that came

²⁰ UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, November 29, 1985

²¹ Id. Clause 4 and 5 of UN Declaration

²² Id. Clause 8 and 11 of UN Declaration

²³ Id. Clause 12 of the UN Declaration

²⁴ Id. Clause 14 (Part B) of UN Declaration

into force on 26th June 1987.²⁵ The CAT calls on states to make the “means for as full rehabilitation as possible” along with other forms of redress, an “enforceable right”. The treatment and rights of torture Victims are also addressed in other international instruments.²⁶ Torture survivors do best where there is a general entitlement to health care and where already high levels of health care are augmented by specialised rehabilitation centres.²⁷

Position In Us

Victims of Crime Act became a part of Federal Law in the United States in 1984. The Crime Victims Fund was established by the Victims of Crime Act of 1984 (VOCA) and serves as a major funding source for Victim services throughout the country. Each year, millions of dollars are deposited into this Fund from criminal fines, forfeited bail bonds, penalty fees, and special assessments collected by U.S. Attorney's Offices, U.S. Courts, and the Bureau of Prisons. These dollars come from offenders convicted of Federal crimes not from taxpayers.²⁸

Every State administers a Crime Victim Compensation Program. These programs provide financial assistance to Victims of both Federal and State crimes. Although each State compensation program is administered independently, most programs have similar eligibility requirements and offer a comparable range of benefits. Maximum awards generally range from \$10,000 to \$25,000. The typical State compensation program requires Victims to report crimes to law enforcement within 3 days and to file claims within a fixed period of time, usually 2 years. Most States can extend these time limits for good cause. If other financial resources are

²⁵ Article 14 states: “Each State Party shall ensure in its legal system that the Victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the Victim as a result of an act of torture, his dependents shall be entitled to compensation.” (emphasis added)

²⁶ Other international instruments and conventions are applicable to the rights of torture survivors to rehabilitation. These include: The Standard Minimum Rules for the Treatment of Prisoners (1977); Additional Protocols to the Geneva Conventions of 1949 (1979); the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988); International Covenant on Economic, Social and Cultural Rights as elaborated in General Comment No. 14 (2000); the Rome Statute of the International Criminal Court (2002); the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005); and the Convention on the Rights of Persons with Disabilities (2007).

²⁷ Douglas A. Johnson and Steven H. Miles, “*As Full Rehabilitation as Possible*”: *Torture Survivors and the Right to Care*”, available at: www.swisshumanrightsbook.com/SHRB/shrb.../12_453_Johnson_Miles.pdf

²⁸ ‘*Victims of Crime Act Crime Victims Fund*’ available at: https://www.ncjrs.gov/ovc_archives/factsheets/cvfvca.htm

available, such as private insurance, compensation is paid only to the extent that the collateral resource does not cover the loss.²⁹

The recognition of common ground between Victim advocates and restorative justice advocates has led to recent alliances, partnerships and collaborations to support or promote restorative justice reform of the criminal justice system. Some of the organisations which have contributed to these efforts include, at the Federal Government level, the U.S. Department of Justice Office for Victims of Crime, the National Victim Center, the National Institute of Justice, the National Institute of Corrections, and the Office for Juvenile Justice and Delinquency Prevention's "Balanced and Restorative Justice Article."³⁰

The United States provides funding to torture treatment centre through the Torture Victims Relief Act, 1998. This funding includes about USD 10 million for domestic programmes, USD 12 million for rehabilitation programmes outside the U.S., and USD 7 million through the UN Voluntary Fund for Victims of Torture. US has a Victims' Compensation Programme which is funded from fines against the perpetrators of corporate fraud. Each year, the Justice Department gives an award to prosecutors who secure the greatest contributions to the Victims' compensation fund. Ideally, as in the example of the Indian police station fines, these kinds of mechanisms should reinforce the accountability of torturers. Funds seized from rogue states or terrorist organisations, or their banks, could support the rehabilitation of Victims of state terrorism.³¹ Like in the United States, Europe and the other developed countries, both the Government of India and the State Governments should enact exclusive legislations for Victims of crime, as the existing provisions in the criminal laws are not sufficient.³²

²⁹ Id.

³⁰ 'Crime and Punishment: Can Mediation Produce Restorative Justice for Victims and Offenders?' available at: <http://vorp.com/articles/crime.html>

³¹ Douglas A. Johnson and Steven H. Miles, "As Full Rehabilitation as Possible": *Torture Survivors and the Right to Care*, p. 221 available at: , Committee on Reforms of Criminal Justice System, (Malimath Committee Report, Para 20.19.4

³² Murugesan Srinivasan and Jane Eyre Mathew, 'Victims and the Criminal Justice System in India: Need for a Paradigm Shift in the Justice System' available at: <http://www.doiserbia.nb.rs/img/doi/1450-6637/2007/1450-66370702051S.pdf>

Position in UK

The European Convention of Compensation of Victims of Violent Crime, 1983 provides for many rights recognised in the UN Declaration.³³ It has also introduced an effective rehabilitation mechanism through the Criminal Injuries Compensation Act, 1995 redressing the needs of Victims of crime. The Criminal Injuries Compensation Scheme is a rapidly growing government initiative. First conceived by the Home Secretary in 1995 and later approved by Parliament, the Scheme began in 1996 with the enactment of the Criminal Injuries Compensation Act, 1995. The concept of statutory compensation for criminal injuries reaches as far back as 1964 in the UK. From that year, until the establishment of the Criminal Injuries Compensation Authority (CICA), this is responsible for running the scheme that has been in place (with minor revisions) since 1996. The Criminal Injuries Compensation Board dealt with similar claims. This makes the UK the first country to have established a scheme of criminal injuries compensation.³⁴ In 2008, UK had come out with The Criminal Injuries Compensation Scheme (2008). This Scheme was made by the Secretary of State under the Criminal Injuries Compensation Act 1995. Applications are received for the payment of compensation to, or in respect of, persons who have sustained criminal injury under this Scheme.³⁵ The CICA offers purely financial compensation to the Victims, or close relatives or friends of Victims, of violent crime. The intention of these financial awards is threefold. Primarily, they are intended to give recognition to the fact that physical or mental injuries have been caused by a crime. Secondly, they are intended to compensate for lost earnings or any extraordinary expenses incurred as a result of that crime, and finally they are also intended, in certain circumstances, to compensate a close relative of a Victim of violent crime for their own lost earnings.

In the UK, Criminal Justice Act, 1988 has made fresh provisions for payment of compensation by the Criminal Injuries Compensation Board. A specialised legislation called 'The Code of Practice for Victims of Crime' sets out the services that the Victim can expect to receive from each of the criminal justice agencies, like the police and the Crown Prosecution Service.³⁶ Far

³³ Supra Note. 19

³⁴ 'Criminal Injuries Compensation Scheme' available at: <http://www.compensationculture.co.uk/criminal-injuries-compensation-scheme.html>

³⁵ *The Criminal Injuries Compensation Scheme (2008)*, available at: <http://www.justice.gov.uk/downloads/guidance/compensation-schemes/cica/am-i-eligible/Criminal%20Injuries%20Compensation%20Scheme%202008.pdf>

³⁶ 'Victims' rights', available at: <http://www.justice.gov.uk/about/vc/rights.htm>

reaching reforms have taken place in England and the year 2000 is a watershed and enactments like the Powers of the Criminal Court Sentencing Act, 2000 modifying earlier laws were enacted introducing a whole range of new and novel punishments such as curfew order, community rehabilitation order, a community punishment order, a community punishment rehabilitation order, a drug treatment and testing order, attendance order, a supervision order, an action plan order. The Power of Criminal Courts Sentencing Act, 2000 provides for a compensation order.³⁷

Analysis of The Present Position in India

The Code of Criminal Procedure, 1973 has recognised the principle of Victim compensation. Section 250 authorises Magistrates to direct complainants or informants to pay compensation to people accused by them without reasonable cause. Again, Section 358 empowers the Court to order a person to pay compensation to another person for causing a Police Officer to arrest such other person wrongfully. The right of a Victim of a crime to receive compensation was recognised even under the Cr.PC, 1898³⁸ but was available only where a substantive sentence of fine was imposed and was limited to the amount of fine actually realised. Section 357(3), Cr.PC permits the grant of compensation even where the accused is not sentenced to fine.³⁹ However this provision is invoked sparingly and inconsistently by the Courts.⁴⁰

Though the principle underlying Section 357 of the Code of Criminal Procedure, 1973 is very much the same as sought to be achieved by the UN Basic Principles of Justice for Victims of Crime, its scope is extremely limited as:

1. The section applies only when the accused is convicted;
2. It is subject to recovery of fine from the accused when fine is part of the sentence;
3. When fine is not imposed as part of the sentence, the Magistrate may order any amount to be paid by way of compensation for any loss or injury by reason of the act for which the accused person has been so sentenced (Section 357(3)); and

³⁷ Id.

³⁸ Section 545 (1 and 2) and s. 546 Cr. PC 1898.

³⁹ Section 357(3).

⁴⁰ In *Hari Singh v. Sukhvir Singh* (1988) 4 SCC 551, the Supreme Court had to exhort the criminal Courts to use this provision since “this power was intended to do something to reassure the Victim that he or she is not forgotten in the criminal justice system”. Recently, in *Pamula Sarawathi v. State of A.P.*, (2003) 3 SCC 317, the Supreme Court, while affirming the conviction of the four assailants of the appellant’s husband, directed them to pay a fine of Rs. 10,000/- which was directed to be paid to the appellant.

4. In awarding the compensation, the Magistrate is to consider the capacity of the accused to pay.⁴¹

The 152nd Law Commission Report had recommended the introduction of Section 357A prescribing *inter-alia* the compensation to be awarded at the time of sentencing to the Victims of crime – Rs. 25,000 in case of bodily injury, not resulting to death; Rs. 1,00,000 in the case of death.⁴² The 154th Law Commission Report went one step ahead and recommended that it was necessary to incorporate “a new Section 357A in the Code to provide for a comprehensive scheme of payment of compensation for all the Victims fairly and adequately by the Courts.”⁴³ In absence of a viable, effective statutory regime for compensation, the Courts in their constitutional law jurisdiction have had to forge new tools to give effect to the right of Victims of crime to be compensated.⁴⁴

A comparison of budget estimates over the years shows that the allocation for the relief and rehabilitation of rape Victims has fallen from Rs 53.30 crore in the 2009-10 Union budget to Rs 36.2 crore in 2010-11 to a mere Rs 7.5 crore in the 2011-12 budget outlays.⁴⁵ The slash is unwarranted given that the number of criminal activities in the country have been steadily on the rise. There seems to be a lack of clarity on compensatory relief for crime especially such as rape. As an endeavour to reform the present criminal justice system, Malimath Committee has come out with certain proposals to improvise country’s Victim Rehabilitation Schemes. To break the cycle of re-offending the report seeks to work out measures including rehabilitation programmes and support to the offenders and even their families.⁴⁶ While making extensive recommendations to ensure that “the system must focus on justice to Victims”⁴⁷, the Malimath Committee has concluded that “criminal justice administration will assume a new direction towards better and

⁴¹ ‘Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power’, 29 November 1985, available at: <http://www.un.org/documents/ga/res/40/a40r034.htm>

⁴² Law Commission of India, 152nd Report on Custodial Crimes (1994).

⁴³ Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973, 63. The Law Commission took note of the existence of a Victim Assistance Fund that had been created in the State of Tamil Nadu.

⁴⁴ The earliest of these case was *Rudul Sah v. State of Bihar* (1983) 4 SCC 141. The inadequacy of the provisions in criminal law to deal with custodial torture is reflected in the reflected on the judgment in *State of M.P v. Shyamsunder Trivedi* (1995) 4 SCC 262.

⁴⁵ ‘Budget allocation cuts relief for rape Victims’, http://articles.timesofindia.indiatimes.com/2011-03-09/mumbai/28671924_1_budget-allocation-Victims-union-budget

⁴⁶ Report of the Committee on Reforms of Criminal Justice System, Government of India Ministry of Home Affairs (Malimath Committee Report), ‘THE VISION FOR THE FUTURE’, Para 23.3

⁴⁷ Id. at 270

quicker justice once the rights of Victims are recognised by law and restitution for loss of life, limb and property are provided for in the system.”⁴⁸

Rehabilitation theories present however the following deficiencies:

1. First, there is no sound scientific research to determine how different individuals react to the same rehabilitating methods.
2. Rehabilitation may depend more decisively on the individual psychological background, hence on his particular motives to commit crimes, than on the rehabilitating methods or philosophy.
3. A rehabilitation program may prove to be too costly and complex to be successfully implemented in most countries.
4. Finally, rehabilitation must refer to the sociological findings on the socialisation and re-socialisation processes, as change in life-long socially acquired patterns of behavior and values entails a much more complex and sometimes traumatic change on the individual's structure of character.⁴⁹

Another question which arises is to see whether the State which fails to protect the life and property of the citizen should be made to pay compensation to the Victim of the crime because provisions for payment of compensation, out of the fine imposed, with all its limitations, are rather illusory. Setting up of a fund for payment of compensation to Victims of crime as is in vogue in Canada, Australia, New Zealand, United Kingdom, under the control of a Board for awarding compensation to Victims of crime would be a positive and a welcome step to assure the Victims of crime that "We care".

In a number of cases, the Supreme Court has laid down some guidelines with regard to assessment of just and reasonable compensation to be paid to the Victims of accidents in light of the existing provisions of Cr.PC. In *Hari Singh v. Sukhbir Singh*⁵⁰ the Court said: "Section 357(2) is an important provision but Courts have seldom invoked it. It empowers the Court to award compensation to Victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to the Victim who

⁴⁸ Id. At 271

⁴⁹ [http://en.wikipedia.org/wiki/Rehabilitation_\(penology\)](http://en.wikipedia.org/wiki/Rehabilitation_(penology))

⁵⁰ 1988) 4 SCC 551

has suffered by the action of the accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the Victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as reconciling the Victim with the offender. It is, to some extent, a constructive approach to the crimes. It is indeed a step forward in our criminal justice system." Similarly the Supreme Court in *Nilabati Behera v. State of Orissa*⁵¹ held that the concept of sovereign immunity is not applicable to the cases of violation of the right to life and liberty guaranteed by Article 21 of the Constitution.⁵² The Court also observed that "Anyone who has been the Victim of unlawful arrest or detention shall have an enforceable right to compensation."

The Supreme Court in *State of M.P. v. Shyamsunder Trivedi*⁵³, found that the Victim died in police custody as a result of extensive beating given to him. The Sub-Inspector of Police was sentenced to pay a fine of Rs 50,000 and other accused sentenced to pay Rs 20,000 each and the *entire* amount of fine on realisation was directed to be paid to the heirs of the deceased. The existing procedure for getting compensation is also time-consuming and creates many problems for the Victim as he has to first go through a criminal trial to establish the culpability of the offender and then go through a civil trial for getting proper compensation as the compensation under Section 357(2) Cr.PC is almost illusory. This should be put to an end in the new victimologically-oriented jurisprudence by providing that both the trials i.e. the trial for finding culpability of the offender and for award of compensation to the Victim should be synthesised into one trial so that both the objectives can be achieved within the same period.

Conclusion

The brief review of the existing legal framework in relation to right of Victims towards rehabilitation reveals that except in the area of providing compensation, very little has been done either statutorily or through schemes to address the entire range of problems faced by the Victims. The development of entitling the Victim a right to rehabilitation is at an early stage. We can learn from and improve upon the diverse, preliminary efforts towards Victim's

⁵¹ (1993) 2 SCC 746

⁵² Id., pp. 762-63, para 17

⁵³ (1995) 4 SCC 262

rehabilitation. Although there will always be debate about what can and should be offered, it is high time for the legislature to come out with diverse and elevating rehabilitation schemes which would genuinely benefit the Victim to forget his plight.

The present position of Victim Rehabilitation Schemes in India needs to be revisited. The provisions under Cr.PC are not able to suffice the mounting needs of Victims. A new specialised legislation needs to be drawn in lines with that of US and UK in order to render meaningful justice, social and legal and facilitate effective rehabilitation such as:

1. Fair, considerate and sympathetic treatment by the police, hospitals, welfare organisations, prosecution and Courts;
2. Prompt restitution/compensation to the Victim for the injury or loss suffered by using the existing provisions; and
3. Security to Victims and potential Victims against victimisation in future.⁵⁴