

# THE RESTORATIVE JUSTICE TO THE VICTIMS OF TERRORIST ATTACKS IN INDIA

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## Abstract

*The approach of victims' oriented study has been growing in the world which has changed the perspective of the traditional Criminal Justice System. The general provisions of criminal procedure for the victims of crimes are not adequate to all the victims of crimes because all the victims of crimes are not homogeneous. Some victims can be differentiated from the nature of violence and injury suffered; like victims of terrorist attacks. The paper is based on the analysis of the existing general legal framework relating to the compensation to the victims of terrorist attacks in India. The study also makes an analysis of the legal framework of compensation to the victims of terrorist attacks of India in compliance with the international legal standard. This paper suggests specialized robust legal framework towards the compensatory justice to the victims of terrorist attacks in India.*

## I. Introduction

The greatest peril for the human beings is the growing terrorist attacks in the World. Every State of the World has been encountering the growing terrorist's activities, and the ideologies behind the attacks make great hurdles to counter such attacks. The objectives of these attacks have not confined to the damaging the properties or hindering the administrations of a State but to target the innocents and helpless people of a State.

The terrorist attacks are based on the acts of violence where the innocent people lost their lives, limbs, and family members.<sup>2</sup> Although, most of the States have adopted the counter-terrorism measure to combat terrorism; however, it is very unfortunate that there is no law and policy for rehabilitative measures for the victims in the strategies framed by the States to counter-terrorism.

The political command express their solidarity with the victims during the terrorist attacks, but the attention toward them melt away soon after the memory of the horrible

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1. See Bruce Hoffman, *Inside Terrorism* 168-170 (Columbia University Press, 1998)

2. See Anthony Richards, *Conceptualizing Terrorism* 141-142 (OUP Oxford, 2015)

act fades.<sup>3</sup> Although, the infringement of rights of a victims sets the law into motion in the criminal court at the judgment the victims have not given much importance.<sup>4</sup> The victims are treated forgotten men during the judgment because there is lack of substantive law to award compensation and restorative justice.<sup>5</sup> The criminal justice system is more inclined to protect the accused's rights so the accused are given immense importance during the trial proceeding, and the Government also spends a considerable amount of money for their maintenance in custody.<sup>6</sup> There should be a fair trial for both the victim and accused in the judicial proceedings. It is well settled that fairness of trial has to be seen not only from the point of view of the accused but also from the point of view of the victim and the society.<sup>7</sup> However, the court procedure demands the active participation of the accused person in the trial proceeding and disproving his charges, but the involvement of the victims should not be less in trial and at the stage of pronouncement of judgment.<sup>8</sup> The International Criminal Court, in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, held that the victims also have every right to participate in the trial proceeding.<sup>9</sup> The Victims' right to participate includes the protection of the victims, to get information of the judicial proceedings, and involvement in some prosecutorial decisions.<sup>10</sup> There should not be a defeat of legal system by allowing an unfair advantage to either party in the trial. The Court should ensure a fair trial for both the parties of the case.<sup>11</sup> While discussing the concept of a fair trial, the Supreme Court of India has stated that "we should devote some attention

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3. Alex P. Schmid, "Strengthening the Role of Victims and Incorporating Victims in Efforts to Counter Violent Extremism and Terrorism" *ICCT Research Paper*, The Hague, 5 (2012)
  4. Joanna Shapland, "Victims, the Criminal Justice System and Compensation," 24 *J. Criminol* 131-133 (1984)
  5. G. S. Bajpai, *Victim in the Criminal Justice Process: Perspectives on Police and Judiciary*, 45-52 (Uppal Publishing House, New Delhi 1997); also see: Randy E. Barnett, "Restitution: A New Paradigm of Criminal Justice," 87 *ETHICS* 279-80 (1977); David L. Roland, "Progress in the Victim Reform Movement: No Longer the Forgotten Victim," 17 *PEPP. L. REV.* 35-36 (1989).
  6. Editorial, "Maharashtra government has spent Rs 53 crore on Kasab so far," the Time of India, available at, <https://timesofindia.indiatimes.com/india/Maharashtra-government-has-spent-Rs-53-crore-on-Kasab-so-far/articleshow/15971186.cms> (last visited January 18, 2018)
  7. *AG v. Shiv Kumar Yadav & Anr.* AIR 2015 SC 3501
  8. Pues & Anni. "A Victim's Right to a Fair Trial at the International Criminal Court? Reflections on Article 68(3)", 13 no. 5 *JICJ*. 951-972 (2015)
  9. ICC-01/04-01/06
  10. Christopher R. Goddu, "Victims' Rights or a Fair Trial Wronged," 41 *BUFF. L. REV.* 246-47 (1993)
  11. Jennifer L. Hebert, "Mental Health Records in Sexual Assault Cases: Striking a Balance to Ensure a Fair Trial for Victims and Defendants," 83 *TEX L. REV.* 1453-54 (2005)

to the victims of crime because “fair trial” does not only mean to cry for the accused persons; however, it is also expected to have a fair trial for the victims too.”<sup>12</sup>

It is the duty of the State to provide justice to the aggrieved persons by punishing the accused person. Apart from delivering the punishment, the Court should give a restorative justice to the victims. Punishing the accused person or even the quantum of punishment does not always means the justice has delivered to the victims. The victim’s life cannot be restored by mere punishing the accused. Furthermore, in cases of victims of terrorists’ attack, it is difficult to deliver justice because many a time it is impracticable to make them appear for the trial. Most of the time, the terrorists operate outside the territory, fly away or are gunned down. On the other hand, the victims of terrorist attacks are unattended and waiting their lives to be restored. Accordingly, the restoration of the victims’ lives should be one of the prime concern for the Criminal Justice System of the State.<sup>13</sup>

#### **Defining the victims of terrorist attacks**

In International Law, it is very difficult to trace down the actual definition of the “victims of terrorism” because the diverse geopolitical condition of the world makes a hindrance to giving a consensual definition of the term “terrorism”. Though, some endeavor has been made to categorize the victims of terrorism without specifying the definition of the term terrorism. the United Nations Human Rights Council in its Special Rapporteur<sup>14</sup> categorized the victims of terrorism on the basis of physical and psychological impacts of terrorist attacks upon the victims into direct, secondary, indirect and potential victims.<sup>15</sup> Moreover, the United Nations Office on Drugs and Crime (UNODC) has dedicated a publication to the victims of terrorist acts and tried to explain the victims of terrorist attacks. The United Nations, in its Book, has demonstrated the brief summary of the comparative approach of the different legal provisions at the national level for the awareness of the States in relating to proposed changes which may be incorporated in the criminal justice system for the purpose of assistance and support to victims during the trial.<sup>16</sup> The victims of terrorism can also

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12. *Bhikhalal Kalyanji Jethava v. Central Bureau of Investigation (CBI) and Ors*, para 41, R/SCRA/5476/2017, MANU/GJ/1095/2017.

13. Vasu Nair Rajan, *Victimology in India: An Introductory Study*. 55-58 (Allied Publishers, 1981).

14. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, A/HRC/20/14, 2012.

15. *Ibid.*

16. The United Nations Office on Drugs and Crime, *The Criminal Justice Response to Support Victims of Acts of Terrorism*, (Rev Ed. Vienna: United Nations, 2012).

be understood by interpreting the general definition of the term “victim” taking into note the different kinds of terrorist activities.<sup>17</sup>

Although, there is no specific definition of victims of terrorism in India, however, the meaning can be ascertained by interpreting Section 2(wa) of the Code of criminal procedure, 1973<sup>18</sup> and Section 2(k) of the Unlawful Activities (Prevention) Act, 1967.<sup>19</sup> The Code of Criminal Procedure defines the term ‘Victims’ under Section 2(wa) as “a person who has suffered any loss or injury caused because of the act or omission for which the accused person has been charged, and the expression “victim” include his or her guardian or legal heir”.<sup>20</sup> This definition of ‘Victim’ has been incorporated under the Code of Criminal Procedure mostly inspire from the definition of victims provided under the UN “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.”<sup>21</sup> The Unlawful Activities (Prevention) Act, 1967 explain the terms terrorist acts, terrorism, and terrorist. Hence, both the definition under the different Acts are complimenting to each other and it can be construed that, the victims of terrorism are those persons who have suffered any loss or injury caused by the terrorists’ attack. Furthermore, the term “terrorist activities” has defined under Section 15 of the Unlawful Activities (Prevention) Act, 1967<sup>22</sup> which includes attacks done by a terrorist group operating within or outside the country. In furtherance of the objective of the Act, the Government of India has also identified the terrorist groups and listed them in the Schedule I of the Unlawful Activities (Prevention) Act, 1967<sup>23</sup>

### **The concept of restorative justice for victims of crime**

One of the objectives of the Criminal Justice System is to provide justice to the victim of a crime.<sup>24</sup> The purpose of justice is not only to punish the offender but it is also to give the direction for restoring the life of the aggrieved persons. Although, the

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17. Carlos Fernández de Casadevante Romani, *International Law of Victims*, (Springer Sci & Bus Med, 2012)

18. The Code of Criminal Procedure, 1973 (Act no. 2 of 1974).

19. The Unlawful Activities (Prevention) Act, 1967 (Act N. 37 of 1967).

20. The Criminal Procedure Code, 1973, Sec. 2(wa)

21. See the Para 1 of the Declaration “the ‘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.”

22. The Unlawful Activities (Prevention) Act, 1967.

23. *Ibid*, Schedule.

24. Wemmers, J. A. M. *Victims in the Criminal Justice System 3* (Kugler Publications, 1996).

Judiciary or the State cannot restore the previous stage of the victims; however, there should be some remedial measure which can help in restoring the life of the sufferer. Awarding compensation can be one of those remedial measures which Judiciary or the State tends to provide social justice to the aggrieved.<sup>25</sup>

The restorative justice in broad sense encourages to compensate the loss suffered and repair the position of the victim in the society to lead a respectful life.<sup>26</sup> The normative explanation of the Compensation is the monetary assistance by the Government to the victims of crime.<sup>27</sup> The literal meaning of the term Compensation means to compensate the loss or injury of a person. The underlying purpose of compensation is to make good the loss suffered by the aggrieved or dependents of the victim.<sup>28</sup> Compensation denotes a thing given to make equivalent or a thing has given to make good for loss, recompense, remuneration or pay.<sup>29</sup> The Black's Law Dictionary<sup>30</sup> defines the term compensation as "Compensation denotes payment of damages or any other act that court orders to be done by a person who has caused injury to another and must, therefore, make the other whole." The Cambridge Dictionary<sup>31</sup> defines the term Compensation as, "money that is paid to someone in exchange for something that has been lost or damaged or for some problem."

The Compensation is a remedy to restore the life of aggrieved, but debate erupts "whether the compensation is a sole remedy?" While we analyze the compensation as a sole remedy for the infringement of right and loss of life or limb, then we have to make a difference in viewing that in light to restore justice to the victim. Hon'ble Orissa High Court in *Saraswate Parabbhai v. Grid Corp. of Orissa*,<sup>32</sup> ruled that "It is the fact that perfect relief is barely possible and money cannot make good a physical structure of that has been battered and shattered" court referred to the Lord Morris in the case of *West v. Shephard*.<sup>33</sup> Justice requires that it should be equal in value, although not alike.

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25. Thilagaraj, R., & Liu, J. *Restorative Justice in India: Traditional Practice and Contemporary Applications*. 78 (Springer Eds, (2017).

26. D Miller, *Social Justice* 68 (Oxford: Oxford University Press, 1976)

27. Van Ness, D. W., & Strong, K. H. *Restoring Justice: An Introduction to Restorative Justice*. 96 (Routledge, 2014).

28. Latha, S. (2017). "Compensatory Jurisprudence in India," In *Restorative Justice in India* 77-87 (Springer, 2017)

29. *State of Gujarat v. Shantilal*, AIR 1969 SC 634

30. *Black's Law Dictionary*, 7th ed, *sub verbo* "compensation"

31. Compensation, (n.d) *Cambridge Online Dictionary*, available at: <http://dictionary.cambridge.org/dictionary/english/compensation> , (last visited on November 04, 2016).

32. AIR 2000 Ori 13.

33. (1964) AC 326.

## II. International initiative for the restorative justice to the victims of terrorism

### United Nations

After the horrible consequence of the two World Wars, the focuses of the Leaders of the States shifted to the pathetic situation of the victims of crime in the world. The perspective of the International Law towards the victims has changed after the 1980s. The scenario of the victims has started changing only after adopting the “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power” by the General Assembly.<sup>34</sup> This Declaration constitutes a basic standard of treatment of the victims of crime. This Declaration suggests different measures to secure justice and fair treatment to the victims of crime. In its third para, Declaration explains, that “The Declaration is designed to assist Governments and the International Community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power.”<sup>35</sup> This Declaration suggests to ensure compensation and assistance to the victims of offence by the Member States.

The Economic and Social Council (ECOSOC) has taken the initiative to implement the Declaration which is adopted in the General Assembly Resolution No. 40/34. In this regard, the ECOSOC has adopted two resolutions, Resolution No. 1989/57 on 24<sup>th</sup> May, 1989 and Resolution No. 1998/21 on 28<sup>th</sup> July, 1998, for implementation of the Declaration. These two resolutions show the way to the Member States on different measures to fulfill the basic standard as provided in the Declaration, for example accessing the current laws, instructing the officials, framing the compensation policies and encouraging academic research in the Countries.

Again in 2005, a major step has been taken to provide restorative reliefs to the victims of offences by the United Nations. The “Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” has been approved by the General Assembly through the Resolution No. 60/147. The cardinal objective of this Resolution is to enhance the situation of the victims of offence and make conducive to lead their lives peacefully.

In 8<sup>th</sup> September 2006, the General Assembly framed and adopted a plan for counter-terrorism and protection of human rights which is called as Global Counter-

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34. Declarations of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 (A/RES/40/34).

35. *Ibid.* para 3

Terrorism Strategy.<sup>36</sup> Support to Victims of terrorism is highlighted under Pillar I and Pillar IV of the United Nations Global Counter-Terrorism Strategy. To support these two pillars, the Strategy seeks to stress “promote international solidarity in support of victims”, and “the need to promote and protect the rights of victims of terrorism and their families and facilitate the normalization of their lives”, and identifies the “dehumanization of victims of terrorism” as one of the key issue that generates the conditions conducive to the spread of terrorism.<sup>37</sup>

On 18th December, 2009, the General Assembly has adopted the Resolution No. 64/168 which urges all the members of the UN and other international, regional and sub-regional organizations, including the UNODC to assist the Member States for the development and implementation of programmes of assistance and support for victims of terrorism in accordance with relevant national legislation. In April 2017, also the General Assembly has adopted a resolution and encourages the States to provide appropriate assistance and rehabilitation for victims of terrorism in accordance with relevant national laws from within available resources.<sup>38</sup> In October 2017, the General Assembly has adopted a resolution to declare 19th August as the International Day of Remembrance of and Tribute to the Victims of Terrorism.<sup>39</sup>

### **Restorative Justice in European Countries**

In the European Countries, the idea relating to the compensation to the victims of crime was prevailing since the 1970s.<sup>40</sup> The idea structured in the European Convention on the Compensation of Victims of Violent Crimes in 1983 by the Council of Europe.<sup>41</sup> This Convention seeks the Member States to harmonize the laws relating to compensation of victims of crime. The Convention makes an attempt that the member states should establish a compensation scheme for the victims of crime.<sup>42</sup> The Convention suggests that the compensation has to be given by the State where the crime has happened. The compensation must be given to the citizens of the State where the crime committed and citizens of all Members of the Council.

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36. A/RES/60/288.

37. A/RES/70/291.

38. A/HRC/RES/34/8.

39. A/C.3/72/L.24.

40. Stephen Schafer, *Compensation and Restitution to Victims of crime*, 77-79 (Patt S Pub Co, 1970).

41. European Convention on the Compensation of Victims of Violent Crimes, Nov. 23, 1983, Eur. T. S. No. 116.

42. Nicholas C. Katsoris, “The European Convention on the Compensation of Victims of Violent Crimes: A Decade of Frustration” 14 *Fordham Int’l L.J.* 186 (1990).

After more than two decades gaps, the Council of Europe drafted guidelines for the Protection of Victims of Terrorist Acts.<sup>43</sup> The Guidelines urged the Member States to take measures for the protection and assistance of the victims of the terrorist attacks. The States have to ensure that the families of the victims who have suffered psychological and physical loss must get compensation.<sup>44</sup> Moreover, the compensation must be easily available to the victims of the terrorist attacks irrespective of any nationality.<sup>45</sup> After these Guidelines, the compensation to the victims of the terrorist attacks have become a specific subject of discussion to restore the victims' lives or his/her dependents. The International Organizations have urged worldwide support and solidarity for the victims of the terrorist attacks. In 2006, the Council of Europe had made recommendations on the assistance to the victims of crime.<sup>46</sup> In this Recommendation, the term "victim" has been defined broadly so as to include all the categories of victims of violent crimes and also the International crimes. On the basis of this Recommendation, the States have to provide without due delay sufficient compensation to the victims and immediate relatives of the victims.

The European Union expressed its concern regarding the victims of crimes and the victims of terrorist attacks in several green papers, framework decisions, recommendation which are issued by the European Parliament and the European Council.<sup>47</sup> However, a visible action can be shown in the Council's Joint Action which is framed to counter the sexual exploitation of the child and human trafficking.<sup>48</sup> How this is related to the topic The Framework Decision on the standing of victims in criminal proceedings of 15<sup>th</sup> March, 2001 has issued to provide compensation to the victims of a crime by the accused.<sup>49</sup> However, it has not mentioned anything regarding the accused person who has not identified or unable to pay the compensation.

Another important resolution regarding the role of the European Union in countering terrorism has been taken six days before the 11<sup>th</sup> September, 2001.<sup>50</sup> In

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43. Adopted by the Committee of Ministers on 2 March 2005 at the 917th meeting

44. Rianne Letschert, Ines Staiger, et al., *Assisting Victims of Terrorism: Towards a European Standard of Justice* 92-24 (Springer, 2009)

45. *Ibid*, p 94

46. Committee of Ministers (2006), Recommendation Rec (2006)8 of the Committee of Ministers to Member States on assistance to crime victims, Adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies

47. Albrecht HJ. & Kilchling M., "Victims of Terrorism Policies: Should Victims of Terrorism Be Treated Differently?" In: Wade M., Maljevic A. *A War on Terror?* 221-244 (Springer, NY 2010)

48. (97/154/JHA) 90J L 63E, 1997, p. 2

49. Official Journal L082, 22/03 /2001 P. 0001 – 0004

50. 40J C 72E, 21March 2002, p. 135



2004, the European Council issued Directive (European Council Directive No. 2004/80/EC) to implement the Framework decision of the Union for the compensation to the victims of the crime.<sup>51</sup> The Directive also proposes the rights of the victims of crimes to claim from the Member States and the States where the crime is committed. The Directive have suggested the minimum standard of procedure to obtain the compensatory relief as the similarities of the national laws of the States.

### III. Development of restorative justice in India through Judicial Pronouncements

The Judiciary has played an active role in the constitutional interpretation and devising compensation as a remedy for the violation of public laws or infringement of Fundamental Rights.<sup>52</sup> Initially, the concept of the right to compensation has not been directly enumerated in the Constitution of India; however, after interpretation in various *dictums*, it has been recognized as an unenumerated constitutional right.<sup>53</sup> The Constitutional Courts in awarding compensatory relief to the victims emphasized that the State has the duty to protect the fundamental rights of its subjects not only against the actions of its instrumentality but is also responsible for hardships on the victims on the grounds of humanitarian and obligation of social welfare, duty to protect its subject, equitable justice etc.<sup>54</sup> The Supreme Court and the High Courts have adopted the restorative approach while protecting the infringement of the fundamental rights of the Constitution under Constitutional remedies, Article 32 and 226 respectively. The scope of both provisions are more comprehensive and also different while providing the compensatory remedy to a victim of fundamental rights. The Supreme Court empowered by Article 32 “to issue directions, orders or writs, whichever may be suitable for the enforcement of any of the fundamental rights conferred by Part III of the Constitution.”<sup>55</sup> So, the Supreme Court may grant monetary reliefs under the Article 32 of the Constitution of India as an exemplary cost.<sup>56</sup> Article 32 clause (1) vested the *locus standi* to approach the Supreme Court by suitable proceedings for the protection of the fundamental rights. Furthermore, the Apex Court under Article 32 clause (2) is

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51. OJ L 261, 6 August 2004, p. 15.

52. Wolfgang, M. E. (1965). “Victim compensation for crimes of personal violence” *Minn. L. Rev.*, 223 ; Anand, A. S. “Judicial Review-Judicial Activism-Need for Caution.” 24 *JILL*, 149-159.

53. *Infra* note 57.

54. Thilagaraj, R. and Liu, J, *Restorative Justice in India: Traditional Practice and Contemporary Applications*. (Springer, 2017).

55. The Constitution of India, art. 32

56. Lisa Tortell, *Monetary Remedies for Breach of Human Rights: A Comparative Study Human Rights Law in Perspective* 76-78 (Bloomsbury Publishing, 2006).

free to devise any procedure for the enforcement of a fundamental right, and the Court has the power to issue any process essential in a given litigation.<sup>57</sup>

The constitutional remedies as provided in Article 226 are broader than the remedies provided in Article 32. The language of this Article 226 guarantees an individual to move the High Court for enforcement of “the fundamental rights as well as for any other purpose,” i.e., for enforcement of any other constitutional rights. The High Court has vested broad power under this Article. Furthermore, it has been mentioned in the Article 226 “to issue to any person or authority” makes an entirely different from the scope of Article 32. Hence, the powers of High Courts vested under Article 226 are more extensive as compared to powers vested on the Supreme Court under Article 32. The power of the High Courts is not confined to the matter of the fundamental rights, but it is also expanding to the other legal rights. The High Courts have the power to award compensation in the violation of other legal rights.

The Supreme Court has started awarding compensation for the violation of fundamental rights as provided under the Constitution of India. In the case of *Nilabati Behera*,<sup>58</sup> the Supreme Court has awarded an exemplary compensation to the victim for the custodial death of her son. However, the compensation as a remedy has established as a fundamental right by the case of *Rudal Shah*.<sup>59</sup> Subsequently, the Supreme Court has expanded the concept of Compensation for the infringement of fundamental rights as a tool to relieve the pain of the aggrieved. The Supreme Court in the case of *Sebastian M. Hongray v. Union of India & Ors*,<sup>60</sup> awarded compensation of Rs.1 lakh on account of the failure of the Government to produce in habeas corpus petition filed by his wife, as the person was missing from Army custody. Subsequently, in *Mohan Lal Sharma vs. State Of Uttar Pradesh*,<sup>61</sup> the Supreme Court observed that the detenu is entitled to the right to compensation under the patronage of Article 21. Furthermore, in the case of *Sabli v. Commissioner of Police, Delhi*,<sup>62</sup> the Court observed that an action for compensation lies for bodily harm, including battery, physical injuries, death, assault, false imprisonment etc.

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57. *Rudal Sab v. the State Of Bihar And Another*, 1983 AIR 1086.

58. *Nilabati Behera v. State of Orissa*, AIR 1993 SC 1960.

59. *Rudal Shah v. the State Of Bihar And Another*, AIR 1983 SC 1086.

60. 1984 AIR 1026.

61. (1989) 2 SCC 600.

62. 1990 AIR 513.

### **Judicial initiative to introduce the restorative justice for the victims of crime & terr in India**

The Supreme Court and the High Courts have played a vital role to provide compensation to the victims of crimes. In *Sarwan Singh v. State of Punjab*,<sup>63</sup> the Apex Court of India has interpreted the real intention of Section 357 of the Code of Criminal Procedure which empowers the Court to award compensation to the victims of crimes. In this Case, the Supreme Court has explained that “while awarding compensation under Section 357, the Court must consider the gravity of the crime and injury of the victims and justness of the claim for the monetary compensation to the aggrieved”. In the case of *Hari Singh v. Sukhbir Singh*, the Supreme Court has stated that the compensation award under the Section 357 is not ancillary rather it is in additions to the punishment.<sup>64</sup> However, if the victims cannot find a desired compensation, alternative remedy under Section 482 can be exhausted by the aggrieved party.<sup>65</sup>

Subsequently, in the case of *Smt. Kamla Devi v. Government of NCT of Delhi & Anr*,<sup>66</sup> the Delhi High Court has awarded monetary compensation to the victims of terrorist attacks. The High Court has accused the State for the failure to protect the citizens; and held that public law demands, as distinct from private law and tort remedy, a victim of crime has to be given compensatory relief even in no-fault situations by State, as it is the breach of constitutional guaranteed right under Article 21 of the Constitution.<sup>67</sup> The Court further evaluates the State’s responsibility and stated that “Let us see who the persons responsible for the wrong? Primarily, it is the terrorist who were assembling the bomb. Next, it is the State as it failed in living up to its guarantee that ‘no person shall be deprived of his life and personal liberty; except according to procedure established by law’. The State failed to prevent the terrorist from harming innocent citizens. Terrorism itself is indicia of the inability of the State to curb resentment and to quell fissiparous activities. Social malaise in itself is a reflection of the State’s inefficiency in dealing with the situation in a proper manner. Apart from the general inability to tackle the volatile situation, in this case, the State agencies failed in their duty to prevent terrorists from entering Delhi. It was their responsibility to see that dangerous explosives such as RDX were not available to criminals and terrorists. The incident occurred as there was a failure on the part of the State to prevent it. There was a failure of intelligence they did not pick up the movement of this known

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63. *Sarwan Singh v. State of Punjab* AIR 1978 SC 1525

64. *Hari Singh v. Sukhbir Singh* [1988]4 SCC 551.

65. *Palanippa Gounder v. State of Tamil Nadu* (1977) 2 SCC 634

66. *Smt. Kamla Devi v. Government of NCT of Delhi & Anr*, (2004) 114 DLT 57

67. *Ibid.* para 21

and dangerous terrorist.”<sup>68</sup> In the Smt. Kamla Devi case, the Court has given guidelines to make a scheme for compensation to the victims of terrorism.

The Government of India has approved several compensation schemes.<sup>69</sup> After implementing these scheme for the compensation to the victims of terrorist attacks, several issues have raised in the Higher Judiciary. In the *Gopinath Ghosh v. State of Jharkhand & Anor*,<sup>70</sup> the Court has held that the compensation amount fixed by the Government is not adequate for the rehabilitation of the victims of the terrorist attacks. Again, in the case of *Leesha v. The Secretary, Department of Home Affairs Government of Karnataka and Ors*,<sup>71</sup> the Court has stated that there is a gross delay of awarding of compensation to the victims of the terrorist attacks. The Court has issued a direction to the State to provide the compensation to the victims within six months.

### **Shifting of paradigm in the legislative framework for restorative justice in the Indian Criminal Justice System**

The code of Criminal Procedure, 1973 provides a provision for compensating the victims of crime under Section 357 but in this provision, the accused has to be pay compensation after his conviction. However, in the year 2008, a significant change in the criminal law has been brought in the India criminal justice system, the Indian Parliament has incorporated the concept of compensation for the victims of crime under the Criminal Procedure Amendment Act, 2008. Section 357A has been inserted in the Code of Criminal Procedure, 1973 for the compensation and assistance to the victims of crime. The new section directed every State Government in coordination with the Central Government to create a compensation scheme with the intention to give compensation to the aggrieved or his dependents who have suffered loss or injury as a result of the crime and requires rehabilitation. The Court has to recommend the District Legal Service or State Legal Service Authority under Section 357A to decide the quantum of compensation to be awarded to the victims. After getting the recommendation or application form the victims, the District Legal Service or State Legal Service Authority has to prepare a report within two months and submit to the concerned Court. After being satisfied with the recommendation, the court may award the compensation to the victims of the crime.

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68. *Ibid* para 5.

69. Central Scheme for Assistance to Civilians Victims/Family of Victims of Terrorist, Communal and Naxal Violence; Central Scheme for Assistance to Civilian Victims of Terrorist/ Communal/ Left Wing Extremist (LWE), Cross Border Firing and Mine/IED blasts on Indian Territory; Central Victim Compensation Fund.

70. *Gopi Nath Ghosh v. The State of Jharkhand & Anr.* MANU/JH/0200/2014

71. *Leesha v. The Secretary, Department of Home Affairs Government of Karnataka and Ors.* MANU/KA/2458/2016

Although, there is no specific legislation for the rehabilitation of the victims of terrorist attacks in India; however, for last decade, several attempts have made by the Legislator of India to bring uniform law regarding the compensation to the victims of terror attacks.<sup>72</sup> The Victims of Terrorism (Compensation and Rehabilitation) Bill, 2004 was introduced by the Raj Kumar Dhoot in a Private Members' Bill on 3<sup>rd</sup> December 2004 in the Rajya Sabha.<sup>73</sup> The Bill advocated to establish a National Commission for Victims of Terrorism, victims may approach this commission to claim compensation and the Commission's decision shall be binding on the appropriate Government. The next attempt was made on 19<sup>th</sup> December, 2008, when Shri Gireesh Kumar Sanghi, member Rajya Sabha introduced Private Members bill. The Victims of Terrorism (Compensation and Miscellaneous Provisions) Bill.<sup>74</sup> The Bill suggested to the appropriate Government to formulate rehabilitation package for the victims of terrorist violence by way of providing employment, vocational training, self-employment and such other measures as the Government may deem fit and necessary for the purposes of fulfilling objective of the bill. Again, in 2012, The Victims of Terrorism (Provision of Compensation and Welfare Measures) Bill, 2012 has been introduced in the Lok Sabha by Shri Chandrakant Khaire.<sup>75</sup> In this 2012 Bill, the Legislator has suggested that the Central Government has to bear all the expenses of the victims and makes provision for their rehabilitation. However, all these bills become redundant, as no further action was taken by the Parliament.

### **Rehabilitation schemes for the victims of terrorist attacks**

Apart from the scheme provided under Section 357A of the Code of Criminal Procedure, the Government of India has approved a compensation scheme in 2008 especially for the victims of terrorist attacks.<sup>76</sup> "The Central Scheme for Assistance to Civilians Victims/Family of Victims of Terrorist, Communal and Naxal Violence, 2008" formed to provide the civilian victims and the families of the deceased an amount of three lakhs as assistance from the Government of India only after a written application of the concerned person. Subsequently, this scheme was revised several

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72. The Victims of Terrorism (Compensation and Rehabilitation) Bill, 2004; The Victims of Terrorism (Compensation and Miscellaneous Provisions) Bill, 2008; The Victims of Terrorism (Provision of Compensation and Welfare Measures) Bill, 2012.

73. The Victims of Terrorism (Compensation & Rehabilitation) Bill, 2004, *available at*: <http://rsdebate.nic.in/handle/123456789/65089> (last visited on January 06, 2018).

74. The Victims of Terrorism (Compensation & Miscellaneous Provisions) Bill, 2006, *available at*: <http://rsdebate.nic.in/handle/123456789/227973> (last visited on January 06, 2018).

75. The database of the Lok Sabha <http://164.100.47.194/Loksabha/Debates/Result15.aspx?dbsl=8473> (last visited on January 07, 2018).

76. Central Scheme for Assistance to Civilians Victims/Family of Victims of Terrorist, Communal and Naxal Violence, 2008.

times.<sup>77</sup> Later on, the Government of India has revised the guidelines of assistance scheme in 2016 and changed the title as “Central Scheme for Assistance to Civilian Victims of Terrorist/ Communal/Left Wing Extremist, Cross Border Firing and Mine blasts on Indian Territory”. In the Assistance Scheme, the compensation amount has increased from three lakhs to five lakhs. This scheme also provides for health care to the victims of terrorist attacks under the programme of the Health Ministry of India “Rashtriya Arogya Nidhi” and “National Trauma Care Project”. The Children of the victims’ families are also entitled to get assistance under the ‘Project Assist’ being implemented by the National Foundation for Communal Harmony of the Ministry of Home Affairs. However, the scheme framed by the Central Government has not been adequate enough, and the victims find it difficult to get the benefits from the scheme because of the procedural loopholes and territorial applicability of the Scheme, as it does not consist any timeframe for disposing the application, documentation etc.<sup>78</sup>

#### IV. Conclusion

The Indian Judiciary has devised new remedies which unfortunately are not explicitly enumerated in any substantive law in India. Granting compensation to the victims will be a revolutionary step and effective remedy to a victim. The criminal justice system of India is adopting the restorative approach for the victims of crime to meet the ends of justice. Although, The Indian Government has been taking strong initiatives for the countering of terrorism; however, in spite of all measures these horrible acts of terrorism cannot be horned. Moreover, in comparison to the European Countries, the strategies made by the Indian Government are less concerned about the rehabilitation the victims of terrorist attacks. The position of the victims become worst as there is no specific law for the compensation and rehabilitation. The compensation scheme made by the Central Government for the financial assistance to the victims of terrorist attacks has several loopholes, such as the amount provided under the compensation scheme is not adequate and not based on any scientific methods to restore the life of the victims of terrorist attacks. Furthermore, the procedural delay of providing compensation makes this Assistance Scheme less effective because the victims of terrorist attacks need an instant support to restore their lives. Therefore, the present situation demands a specific legislation to provide a restorative justice to the victims of terrorist attacks.

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77. See generally The Central Scheme for Assistance to Civilian Victims/Family of Victim of Terrorist, Communal and Naxal Violence, 2008 available at: <http://mha1.nic.in/pdfs/T-Guide141008.pdf> (last visited on January 08, 2018).

78. Sanjeev P Sahni & Astha Dhanda, et al., *Victims’ Assistance in India - Suggesting Legislative Reform: A Comprehensive Comparative Policy Review* 55-60 (Ane Books Pvt. Ltd. 2016).