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The Justice System that Benefits None: Indian Criminal Justice System on the Rights of Offenders and Victims

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The article explores the Indian Criminal Justice System, focusing on the principles of restoration, reformation, and rehabilitation. It emphasizes the four primary stakeholders involved in any crime: the offender, the victim, the society, and the state, and highlights the changing principles of the criminal justice system over time. While the system in India is primarily based on the principle of retribution and considers crimes offenses against the state, it acknowledges the need for a shift towards prioritizing the rights and concerns of the victims. The article discusses the challenges victims face in seeking justice within the adversarial justice system, where the state is the adversary. It also addresses the inadequate infrastructure and implementation of laws within the Indian Criminal Justice System. While it refrains from delving into the system's historical evolution, it points out the stagnation in recent years and the failure to address its shortcomings. The article concludes by emphasizing the importance of recognizing the human rights of both victims and offenders and giving primacy to the grievances and interests of the actual victims in the pursuit of justice.

Keywords: *criminal justice system, rehabilitation, restoration, retribution, adversarial system.*

INTRODUCTION

The criminal justice system is a network of a host of government institutions responsible for preventing and punishing criminal activities. The principal agencies involved in the functioning

of the criminal justice system are i) police, ii) courts, and iii) correctional authorities.¹ At its root, the system seeks to maintain public peace and tranquility by punishing the outlaws and upholds the rule of law by protecting the human rights of each citizen. The criminal justice system of each country involves four primary stakeholders as part of any crime, i.e. the offender, the victim, the society and the state. What is different, though, is the weightage given to these stakeholders. The principles of the system have, however, changed substantially over centuries. Where earlier the death penalty was awarded to offenders of even petty crimes, like theft, the courts have now settled to award the same for only the rarest of the rare crimes. The Courts have continuously adjudged that the punishment should not be retributive in nature, as it benefits none; rather, it shall be based on the principles of restoration, reformation, and rehabilitation.

India's Criminal Justice System is primarily based on the principle of retribution, and any crime committed is held to be against the interests of the state. India has an adversarial justice system where the state is the recognised adversary in matters of crime. This benefits the victim as the public prosecutor representing the state is, most of the time, more equipped to present better arguments. However, this structure of the criminal justice system prevents the victims from presenting their cases and voicing their concerns, thereby interfering with and violating their right to seek justice. On this, Louis Brandeis has famously said, *"To declare that in the administration of criminal law, the end justifies the means, to declare that the government may commit crimes in order to secure the conviction of a private criminal would bring terrible retribution."* In India, where the punishment for crime is either a prison sentence or fine or both (or capital punishment in rare cases), it is yet to be said with certainty whether any of this helps rehabilitate the victims. Further, as has been pointed out frequently, the issue with the Indian Criminal Justice system is not the paucity of laws but the lack of infrastructure to implement these laws. This further makes the process of receiving justice excruciating.

¹ 'Exploring the Components of India's Criminal Justice System: A Comprehensive Look at the Punishment System' *Times of India* (04 Jan 2023) <<https://timesofindia.indiatimes.com/readersblog/lawpedia/exploring-the-components-of-indias-criminal-justice-system-a-comprehensive-look-at-the-punishment-system-48833/>> accessed 10 June 2023

The Indian Criminal Justice System is stretched across the fine points of restoration, reformation, and rehabilitation in a way that no stakeholders feel its interest is ignored. This article, however, stops short of delving deep into the history and evolution of the criminal justice system in India and does not discuss the various reformation it has gone through these last few centuries. What it does talk about is the fact that our system has remained largely stagnant in the last century after the birth of the Indian Penal Code. It discusses the system's failure in doing away with its lacuna, and in cases where headway has been made in terms of progressive laws, the executive body has failed to implement the changes. The rule of law clearly states that human rights cannot be separated from an individual. However, what is usually discovered to be amiss is the public authorities' realisation that not only victims but the offenders too are bearers of human rights and that the state may be a primary stakeholder in the judicial proceedings, but it is the grievances and interests of the actual victims who should take primacy.

THE DICHOTOMY BETWEEN THE 'BLACK LETTER LAW' AND THE REALITY: INTROSPECTION OF OFFENDERS' RIGHTS

Law enforcement, the judicial system, and prisons comprise the so-called 'catch, convict, and correct trinity', which divides the criminal justice system into three segments.² Prisons are typically associated with dark feelings of criminal violence and fear mingled with a sense of justice. However, imprisonment is only one of the aims of the prison system in India. It is a short-term goal to protect society and the inmate from its actions. Rehabilitation and reformation lie at the very core of the system.³ The Model Prison Manual harps on the need to recognise the reformatory stance of the prison system.⁴ This concept was first introduced by the Indian Jail Committee 1919-20.⁵ It is astounding to note that the idea which had developed pre-independence is yet to be realised to its potential.

² Dip Jyoti Bez, 'Reformatory and Rehabilitative Treatments Of Offenders: A General Overview' (2018) 2(1) MSSV Journal of Humanities and Social Sciences

³ Model Prison Manual 2016

⁴ *Ibid*

⁵ RPS Teji, 'The Prison, Object and Reforms' (*Delhi District Court EJournal*)

<<https://delhidistrictcourts.nic.in/ejournals/RPS%20TEJI%20-%20PRISON%20OBJECT%20REFORMS.pdf>> accessed 19 June 2023

The number of prisoners has increased rapidly with each passing year. 2019 saw a total no of prisoners reach 4,81,387, which further increased to 5,54,034 in 2021.⁶ The more concerning problem is the disproportionate increase in the number of undertrial prisoners from 3,32,916 to 4,27,165, whereas the number of convicts dropped by 21,715 from 2019 to 2021.⁷ This highlights the ever-present problem of the pendency of cases. According to the India Justice Report, 77% of people are awaiting trial. Such a high rate of pendency of cases sets off a catastrophic chain of events.⁸ Overcrowding of prisons that lack the requisite personnel to manage the prisons leads to a hostile prison environment which further aggravates the problems of health problems, drug abuse et al.⁹ In addition, according to Prison Statistics India 2021, only 1918 convicted inmates were rehabilitated in 2021.¹⁰ The number of inmates provided free legal aid crossed the 1 lakh mark.¹¹ However, the quality of the aid provided remains uncertain. The abysmal rehabilitative and reformatory measures are against the prison system's principles and affect the life of the inmates. Hence, along with providing rehabilitation services to the victims, it is equally important to provide the required help to the inmates to transform their behavior and reduce further crimes upon release.

Education and literacy act as a deterrent to the concept of crime. According to statistics, 40.2% of the prisoners had received education below the 10th standard, and around 25% were illiterate.¹² On the other hand, only 1.3% of the prisoners were technical degree/diploma holders.¹³ Hence, there is a direct causal relation between the education level and the rate of crime committed. Therefore, educational reforms are needed to truly rehabilitate and reform the lives of prisoners and act as a correctional home. In 2021, 38,784, 32,544, 14,083, and 4,350 inmates were 38,784, 32,544, 14,083, and 4,350 who benefited from primary education, adult

⁶ National Crime Records Bureau, *Prison Statistics in India-2021 Executive summary* (31 December 2021)

⁷ *Ibid*

⁸ India Justice Report 2022

⁹ RPS Teji, 'The Prison, Object and Reforms' <<https://delhidistrictcourts.nic.in/ejournals/RPS%20TEJI%20-%20PRISON%20OBJECT%20REFORMS.pdf>> accessed on 19 June 2023

¹⁰ National Crime Records Bureau (n 6)

¹¹ *Ibid*

¹² *Ibid*

¹³ *Ibid*

education, higher education, and computer courses, respectively.¹⁴ There is an apparent lack of higher education being disseminated. Maharashtra, in 2014 set up a study centre across the state, which has helped 1800 inmates to achieve education.¹⁵ While the number is undoubtedly low, such initiatives are crucial to ensure inmates access proper education facilities.

In Becker's model of crime, if the anticipated rewards from committing a crime outweigh the expected costs, including the costs of any foregone legal options, then doing so is desired and preferred.¹⁶ Hence, the better educational standards an individual has the cost of criminal participation becomes higher due to better opportunities in the labour market. Thus, not only is it essential to ensure better educational standards are met in prison, but it is equally vital significantly. According to a study by Rand Corporation, released prisoners who had completed educational qualifications were 43% more likely to not commit any crime within three years of being released.¹⁷

The Model Prison Manual provides an exhaustive list of subjects to be inculcated in the prison system, ultimately leading to the betterment of the prisoners.¹⁸ The topics include academic classes and spiritual and vocational training, essential for inmates' development and mindset reform. If followed correctly, these guidelines could ensure immense benefits to the prisoners. While the dissemination of education is essential for adults, it is equally crucial that care is taken to ensure that the benefits of education are extended to juveniles as well. The Principle of the Best Interest of the Child under the Model Rules, 2007 states: "The traditional objectives of criminal justice, retribution, and repression, must give way to rehabilitative and restorative objectives of juvenile justice." The best way to achieve this restorative process is by ensuring quality education is provided. The current system lacks an assessment of the previous

¹⁴ *Ibid*

¹⁵ Swati Shinde Gole, 'Prisoners turn to education for better life after release in Maharashtra' *Times of India* (11 February 2023) <<https://timesofindia.indiatimes.com/city/pune/prisoners-turn-to-education-for-better-life-after-release-in-maharashtra/articleshow/97811812.cms?from=mdr>> accessed 19 June 2023

¹⁶ Andrew W. Pryor, 'Empirical analysis of an argumented Becker model of criminal behaviour' (Graduate Student Theses, Dissertations, & Professional Papers, University of Montana 2005)

¹⁷ Lois M. Davis et al., 'Evaluating the Effectiveness of Correctional Education' (RAND, 2014) <https://www.rand.org/pubs/research_reports/RR266.html> accessed 19 June 2023

¹⁸ Model Prison Manual 2016

qualifications of the juvenile, which is essential for shaping the future education of the juvenile.¹⁹ In addition, children usually receive vocational training instead of formal educational training, often due to their lack of exposure, leading to disinterest in it.²⁰ Hence, new methods must be developed to ensure absolute development and reform.

In addition to ensuring education availability, providing mental health facilities to prisoners is essential. The Mental Healthcare Act of 2017 provides a framework for dealing with the mental health of prisoners. However, the gap between the letter of the law and reality needs to be bridged. The Orissa Prison Directorate had expressed its displeasure at the erratic visits of psychiatrists when the same is in high demand.²¹ According to NCRB data, there has been a marked increase of 22% of jail inmates suffering from mental illness.²² Hence, it becomes vital that mental health facilities are equipped at each prison. Medical officers and staff should be adequately trained and deployed regularly to create a sustained change in the prisoners' attitudes; in addition to traditional mental health facilities, it is also imperative to look at newer methods to support inmates. One such up-and-coming practice is the development of spiritual teachings. Spiritual teachings focus on the need to be selfless, peaceful, faithful, virtuous, etc. If inculcated into prisoners, these values could help reform their characters. In a study conducted on South African prisoners, it was noticed that religious inmates had fewer negative feelings than non-religious inmates.²³ Hence, looking into the sphere of spiritual well-being for rehabilitation is essential.

¹⁹ Meghna Dasgupta, 'Rehabilitation through Education for Juveniles in Conflict with Law' (2010) Centre for Civil Society Working Paper No 238 <<https://ccs.in/sites/default/files/2022-10/Rehabilitation%20through%20Education%20for%20Juveniles%20in%20Conflict%20with%20Law.pdf>> accessed 19 June 2023

²⁰ *Ibid*

²¹ Debabrata Mohapatra, 'Lack of psychiatrists' visits in jails in Odisha raises concern' *Times of India* (4 July 2022) <<https://timesofindia.indiatimes.com/city/bhubaneswar/lack-of-psychiatrists-visits-to-jails-raises-concern/articleshow/92640627.cms>> accessed 19 June 2023

²² Ambika Pandit, '22% rise in number of mentally ill jail inmates: NCRB' *Times of India* (11 September 2022) <[https://timesofindia.indiatimes.com/india/22-rise-in-number-of-mentally-ill-jail-inmates-ncrb/articleshow/94124324.cms#:~:text=Percentage%20wise%2C%20those%20suffering%20from,%25%20\(23\)%20Owere%20detenues.>](https://timesofindia.indiatimes.com/india/22-rise-in-number-of-mentally-ill-jail-inmates-ncrb/articleshow/94124324.cms#:~:text=Percentage%20wise%2C%20those%20suffering%20from,%25%20(23)%20Owere%20detenues.>)> accessed 19 June 2023

²³ Sung Joon Jang and Byron R Johnson, 'The effect of religiosity on emotional well-being among prisoners', (*Research Outreach*, 27 May 2020) <<https://researchoutreach.org/articles/effect-religiosity-emotional-wellbeing-among-prisoners/>> accessed 19 June 2023

However, to truly ensure the proper address of this reformative measure, two essential factors need to be made more robust, police control and the disposal rate of cases.

India's police force is one of the weakest police forces in the world. The sanctioned strength of the police is 195.39 per 1 lakh of the population, whereas the actual strength is 155.78 per 1 lakh.²⁴ The UN-mandated ratio, on the other hand, is 222 per 1 lakh.²⁵ Hence, the police force is short of the mandated police force. As a result, the police force is overworked and battered. 74% of police station staff and 73.6% of police house officers reported that their work conditions affected their health.²⁶ As a result of such a tedious situation, it is not unlikely that the police officers feel disgruntled and unappreciated, and often, as a result, custodial violence becomes the unfortunate norm. Article 21 of the Indian Constitution, a non-derogable right, incorporates Article 7 of the ICCPR.²⁷ Hence, ensuring that such a problem does not ensue becomes more important as a fundamental right. In *Nandini Satpati v P.L Dani*, the Court has held that physical threats or violence, psychological torture, atmospheric pressure, coercion, etc., by the police, are violative.²⁸ Other cases, such as *Raghubir Singh v State of Haryana*²⁹ and *Sunil Batra v Delhi Administration*³⁰ have condemned custodial violence and encouraged the need to abolish it. The Supreme Court is less than tolerable in incidences of custodial death, as seen in *Ramkrit Yadav v State of U.P. & Anr.* where the Court refused bail to the police accused of custodial death.³¹ These incidents not only hamper the police system but also shake the public's faith in the system, which inherently weakens the system. In addition to custodial violence, the overworked police officers hold a dominant position in the prison system and are often said to abuse their power.³²

²⁴ Government of India, Ministry of Home Affairs, Rajya Sabha Unstarred Question No. 3266

²⁵ Joysheel Shrivastava, 'Indian Criminal Justice System: Navigating The Three Rs Of Retribution, Reformation, And Rehabilitation' *The Leaflet* (8 July 2021) <<https://theleaflet.in/criminal-justice-system-does-it-want-retribution-reformation-or-rehabilitation/>> accessed 19 June 2023

²⁶ Atman Mehta, 'It's not like Singham: Policemen in India work 14 hours a day and get few weekly offs' *Scroll* (26 October 2019) <<https://scroll.in/article/941656/its-not-like-singham-policemen-in-india-work-14-hours-a-day-and-get-few-weekly-offs>> accessed 19 June 2023

²⁷ Prajwal Verma, 'Law and Custodial Death' (*LiveLaw*, 12 January 2023) <<https://www.livelaw.in/columns/custodial-death-constitution-article-21-indian-penal-code-torture-nhrc-218757>> accessed 19 June 2023

²⁸ *Nandini Satpati v P.L Dani* (1978) SCR (3) 608

²⁹ *Raghubir Singh v State of Haryana* (1980) SCR (3) 277

³⁰ *Sunil Batra v Delhi Administration* (1980) SCC (3) 488

³¹ *Ramkrit Yadav v State of UP & Anr* CrI Misc Bail App No 10162/2022

³² RPS Teji (n 9)

In some instances, guards provide inmates with contraband or exceptional treatment in exchange for a bribe.³³ Some of these instances are definitely due to greed, but it is hard not to include the problem of underpayment for the work done. Custodial rape is another deterrent in the police system. *P. Rajakumar v The Additional Director General* is one of the recent cases where the problem was highlighted where the victim was hung upside down and was beaten with lathis.³⁴ Lathis were inserted in her private parts. These incidents are a significant deterrent to the prison system's aim of reformation and rehabilitation.

The Police force needs to be increased to meet the mandated strength by the UN. There needs to be an effective system to ensure that custodial violence is eliminated at its best. The Prevention of Torture Bill, pending before the parliament, must be passed to provide a robust mechanism.³⁵ Initiatives to ensure the betterment of the mental health of the police need to be introduced, which would ultimately reduce their stress and lead to less aggression. The payment scheme could also be revised so that the force does not feel undervalued. Barely ensuring education for prisoners without providing that the police cooperate with the system would be futile. Similarly, better inmate reformation is possible if the number of undertrial prisoners is reduced. This is possible by decreasing the pendency of cases. This is possible by primarily appointing the required no of judges.

In 2022 the sanctioned strength of judges was 21.03 per million population.³⁶ On the other hand, Justice V S Malimath Committee had recommended the authorised strength to be 50 judges per million population.³⁷ Not only does the low number of judges affect the judiciary system, but in addition to this, the judges themselves are overworked and tired. The cases are stretched across years, and justice is not served. In addition, the actual procedure for disposing of cases differs

³³ *Ibid*

³⁴ *P. Rajakumari v The Additional Director General* (2014) WP No 23320/2014

³⁵ Prajwal Verma (n 27)

³⁶ 'India has about 21 judges per million people' *Economic Times* (10 February 2022)

<<https://economictimes.indiatimes.com/news/india/india-has-about-21-judges-per-million-people/articleshow/89481479.cms>> accessed 19 June 2023

³⁷ Dr. Justice V S Malimath Committee, *Committee on Reforms of Criminal Justice System* (March 2003, vol 1)

from the mandated one.³⁸ According to the Code of Civil Procedure, 1908, under Order XVII Rule 1, adjournments are to be granted at a maximum time of 3 times unless there are special practices, but the reality is very different.³⁹ In addition, lawyers also provide long submissions, which are often irrelevant and a tactic to extend the case.⁴⁰ Hence, it is essential to rectify this situation by increasing the appointment of judges. Instead, it should be made mandatory that a seat should not be vacant for more than a particular period, and the length of submissions should be regulated. Only a robust police and judicial system, when coupled with a prison system that focuses on education and providing other facilities to the prisoners, will a rehabilitative and reformatory system be realised.

BLIND SPOT IN INDIA'S CRIMINAL JUSTICE SYSTEM: VICTIMS' RIGHTS AND REHABILITATION

“For too long, the victims of crime have been the forgotten persons of our criminal justice system. Rarely do we give victims the help they need or the attention they deserve. Yet protecting our citizens – to guard them against becoming victims – is the primary purpose of our penal laws. Thus, each new victim personally represents an instance in which our system has failed to prevent crime. Lack of concern for victims compounds that failure.” - President Ronald W. Reagan.⁴¹ Popular phrases like ‘innocent until proven guilty’ or ‘it is better 100 guilty persons should escape than that one innocent person should suffer’ have successfully brought the rights of offenders to the forefront. Even though it cannot be said that the rights of offenders have been completely realised, it is still true that the rights of victims have taken a backseat. The compensation and rehabilitation of the victims who have undoubtedly suffered the most in the incident is just a mere afterthought. As Robert J. Miller, former Governor of Nevada, pointed out, “We were treating victims somewhat like inanimate objects to be present, to say their piece,

³⁸ Ashish Sharma and Dr. Yogender Singh, ‘A study on the Pendency of Cases in Indian Court Vis-à-vis Human Rights’ (2023) 11(1s) Russian Law Journal <<https://doi.org/10.52783/rlj.v11i1S.550>> accessed 12 June 2023

³⁹ Code of Civil Procedure 1908, or XVII r 1

⁴⁰ Ashish Sharma and Dr. Yogender Singh (n 38)

⁴¹ President Ronald W. Reagan, ‘Notable Quotables’ (VC ARCHIVE)

<https://www.ncjrs.gov/ovc_archives/ncvrw/2005/pg1b.html> accessed 12 June 2023

and to then be removed from the process.”⁴² Any real change in the area of victim orientation in the criminal justice system came in the form of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (hereinafter ‘UN Declaration’), which was adopted on November 29, 1985, by the UN General Assembly at its 96th plenary meeting.⁴³ It acknowledged the lacunae present in the justice system and recognised the need to create minimum standards for the protection of victims’ rights in international law.⁴⁴ The United Nations Declaration sought to create a victim-oriented judicial system and divided their rights into four broad categories: (i) access to justice and fair treatment, (ii) restitution, (iii) compensation and (iv) assistance⁴⁵. We shall further look at the scope of all these rights from the Indian perspective and try to gauge the importance of victims’ rights in India.

India derives its criminal laws from (a) the Indian Penal Code, (ii) the Criminal Procedure Code, and (iii) the Indian Evidence Act. The Criminal Procedure Code defines ‘victims’ under Section 2(wa) as “a victim would mean a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression ‘victim’ includes his or her guardian or legal heir.”⁴⁶ Article 51A of the Constitution includes the phrases “to have compassion for living creatures” and “to develop...humanism,” this Justice V.R. Krishna Iyer pointed out can be construed to be the conception of victimology in the Constitution with a little imaginative expansion.⁴⁷ Furthermore, the protection against the unjustified impairment of life and liberty, as provided by Article 21 of the Constitution, contains provisions requiring the state to provide compensation to victims of criminal violence.⁴⁸ Subsequently, various committees and reports were brought about to fill the lacuna of the lack

⁴² Robert J. Miller, ‘Notable Quotables’ (VC ARCHIVE)

<https://www.ncjrs.gov/ovc_archives/ncvrw/2005/pg1b.html> accessed 12 June 2023

⁴³ S. Muralidhan, ‘Rights of victims in the Indian Criminal Justice System’ (2004) National Human Rights Commission Journal <<https://www.ihrc.org/content/a0402.pdf>> accessed 12 June 2023

⁴⁴ *Ibid*

⁴⁵ *Ibid*

⁴⁶ Code of Criminal Procedure 1973, s 2(wa)

⁴⁷ Krishna Iyer, ‘A Burgeoning Global Jurisprudence of Victimology and Some Compassionate Dimensions of India Justice to Victims of Crime’ (1999) Unpublished Paper

⁴⁸ D D Basu, *Constitutional Law of India* (8th edn, Lexis Nexis Butterworths Wadhwa Nagpur 2011)

of research and data on victimology in criminal cases. Each of these was focused on victims' rights, rehabilitation, compensation, etc.

VICTIMS' RIGHTS AND ACCESS TO JUSTICE

Undertrials in India make up seventy-seven percent of the population among those incarcerated. Naturally, this means an increased number of pending cases in courts⁴⁹. According to the data presented by India Justice Reports (IJR), as of December 2022, India is grappling with a significant backlog of pending cases in both high courts and district courts⁵⁰. The total number of pending cases stands at a staggering 49 million (4.9 crore). Among these, approximately 190,000 cases have been awaiting resolution for over three decades, while a staggering 5.6 million cases have remained unresolved for more than ten years⁵¹. On average, about 49% of cases in high courts and 29% in lower courts have been pending for more than five years⁵². Moreover, the Supreme Court of India is burdened with approximately 70,000 pending cases⁵³. Perusing this dismal data, one tends to sympathise with the offenders for suffering in anguish in the prisons waiting for their cases to be heard. However, people forget that it is not only the offender who is suffering but also the victim who is waiting for justice to be served. This leads to the undermining of justice not only for the accused but for the victims, who are either waiting for favourable justice or some kind of compensation for the loss suffered by him. To this effect, Dr. Marion G. Roberston says, "It came through so clearly that the system actually *victimized* the victim – all the way up and down the line from the earlier impact of the crime, to the sentencing to parole, victims were not considered appropriate wards of the system."⁵⁴

⁴⁹ Jahnavi Sen, 'Overcrowded Prisons; Cases Pending per Judge Rising: India's Criminal Justice System in 9 Charts' *The Wire* (04 April 2023) <<https://thewire.in/rights/overcrowded-prisons-cases-pending-per-judge-rising-indias-criminal-justice-system-in-9-charts>> accessed 12 June 2023

⁵⁰ *Ibid*

⁵¹ *Ibid*

⁵² *Ibid*

⁵³ *Ibid*

⁵⁴ Dr Marion G. Roberston, 'Notable Quotables' (VC ARCHIVE) <https://www.ncjrs.gov/ovc_archives/ncvrw/2005/pg1b.html> accessed 12 June 2023

REHABILITATION AND RESTITUTION

The Basic Principles and Guidelines state that reparation encompasses various elements, such as restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition⁵⁵. But before we delve deeper into the concepts, it is imperative to understand that both rehabilitation and reparation cannot be a uniform concept; it cannot be the same for victims of each crime, and thus makes it that much harder to be encompassed in the black letter law. To state it differently, victims of torture, sexual abuse, children of domestic violence, or outlawed society, like enemies of the state, are to be dealt with differently. In many cases, rehabilitation should not include placing them in their earlier circumstances, while in cases where the crime has been perpetual and continuous, it becomes that much more important to tread differently and provide a whole other set of care.

The 154th Law Commission report emphasized the significance of prioritizing the needs and rights of crime victims, as crimes often result in substantial harm to individuals rather than just symbolic harm to society⁵⁶. The rehabilitation of crime victims is crucial, just like the reformation of offenders. Victims experience trauma, stress, loss of dignity and respect, and livelihood, among other challenges. In the case of *Olga Tellis v Bombay Municipal Corporation*, the Court recognized that the violation of the right to livelihood could jeopardize an individual's right to life under Article 21⁵⁷. It is imperative for the system to offer appropriate care, support, and assistance to help victims reintegrate into normal life, treating them with care, respect, and dignity. Comprehensive rehabilitation measures for victims include providing healthcare for physical injuries, mental health support for trauma and stress, community assistance to address difficulties stemming from the crime, and compensation for the damages incurred. The rehabilitation of victims should be considered equally important to the punishment of offenders, even when a crime goes unpunished due to insufficient evidence.

⁵⁵ Barcelona Panda, 'Victims' Right to Rehabilitation: India, UK and US Experience' Manupatra <<http://www.manupatra.com/roundup/348/Articles/Article%20Victim.pdf>> accessed 12 June 2023

⁵⁶ Law Commission of India, *Code of Criminal Procedure 1973* (Law Com No 154, 1996)

⁵⁷ *Olga Tellis v Bombay Municipal Corporation* (1985) SCR Supl (2) 51

COMPENSATION

The Code of Criminal Procedure, 1898, recognized the right of crime victims to receive compensation.⁵⁸ However, this right was only available in cases where a substantive fine was imposed and was limited to the amount of fine actually collected.⁵⁹ In 1973, Section 357(3) of the CrPC was introduced, allowing for compensation even when the accused was not sentenced to a fine.⁶⁰ Unfortunately, this provision has been sparingly and inconsistently invoked by the courts,⁶¹

The 152nd Report of the Law Commission proposed the inclusion of Section 357-A, which recommended that compensation be awarded to victims at the time of sentencing.⁶² The suggested amounts were Rs. 25,000/- for bodily injury not resulting in death and Rs. 1,00,000/- in the case of death⁶³. However, the government failed to implement this recommendation, as highlighted in the 154th Report of the Law Commission⁶⁴. The commission went further and emphasized the need for a new Section 357-A in the Code, which would establish a comprehensive scheme for fair and adequate compensation to all victims by the courts.⁶⁵ This scheme would cover compensation for injuries, loss or damage to the claimant's property resulting from the injury, and support for dependents in case of death caused by injury.⁶⁶ Unfortunately, the government did not act upon this recommendation either.⁶⁷

In 2003, the Malimath Committee, which aimed to reform the Criminal Justice System in India, suggested considering the strategies implemented in the United Kingdom to provide better support for victims.⁶⁸ The committee stressed that victim compensation should be the state's

⁵⁸ S. Muralidhan (n 43)

⁵⁹ *Ibid*

⁶⁰ *Ibid*

⁶¹ *Ibid*

⁶² *Ibid*

⁶³ *Ibid*

⁶⁴ *Ibid*

⁶⁵ *Ibid*

⁶⁶ *Ibid*

⁶⁷ *Ibid*

⁶⁸ Pavithra V. & Riktha Muralidhar, 'Victim Rights in India: Is the Focus of the Criminal Justice System Shifting from the Accused to the Victim' (2021) 4(2) International Journal of Law Management and Humanities

obligation in all serious crimes, regardless of whether the offender is apprehended, convicted, or acquitted. It recommended the establishment of a victim compensation fund to be administered by the Legal Services Authority.⁶⁹ As a result, Section 357A of the Code of Criminal Procedure was introduced, representing a groundbreaking step towards victim rehabilitation within the Indian Criminal Justice system.⁷⁰

The case of *Palaniappa Gounder v State of Tamil Nadu* (AIR 1977 SC 1323) marked a significant judgment in which the Madras High Court ordered compensation to the victim.⁷¹ The Supreme Court of India upheld the decision with certain modifications. In this case, the High Court, after commuting the death sentence of the accused to life imprisonment, imposed a fine of Rs. 20,000 on the appellant⁷². Additionally, it directed that out of this fine, an amount of Rs. 15,000 should be paid to the deceased's son and daughters under Section 357(1)(c) of the Code of Criminal Procedure 1973.⁷³ Upon reviewing the appellant's special leave petition, the Supreme Court acknowledged that courts possess the authority to impose a fine for the offense of murder under Section 302 of the Indian Penal Code.⁷⁴ However, the court criticized by saying that the High Court has put the 'cart before the horse' in leaving the 'propriety of fine to depend upon the amount of compensation.'⁷⁵

Overall, despite the recognition of the right to compensation for crime victims in the past, the implementation of comprehensive measures has been lacking. The government has not acted upon the Law Commission's recommendations to introduce a more inclusive compensation scheme. However, the introduction of Section 357A based on the Malimath Committee's suggestions marked a significant advancement in victim rehabilitation, as it established a victim compensation fund administered by the Legal Services Authority.

⁶⁹ *Ibid*

⁷⁰ *Ibid*

⁷¹ *Palaniappa Gounder v State of Tamil Nadu* AIR 1977 SC 1323

⁷² *Ibid*

⁷³ *Ibid*

⁷⁴ *Ibid*

⁷⁵ *Ibid*

ASSISTANCE

The assistance should be provided in such a way that the victim can receive justice and can be properly rehabilitated and compensated. This includes the right to prefer an appeal if the victim is not satisfied with the outcome of the judicial proceedings.⁷⁶ The 154th Law Commission Report dealt with the victim's right to appeal in criminal cases, which was subsequently followed by the findings of the Malimath Committee, which recommended the same and pushed for amendment in the Criminal Procedure Code.⁷⁷ In accordance with the suggestions put forth by the Malimath Committee and the Law Commission, the legislature has incorporated a provision following section 372 of the code through the Amendment Act of 2008.⁷⁸ This provision aims to establish the right of appeal for the victim. It reads as follows: "Provided that 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 be to the court to which an appeal ordinarily lies against the order of conviction of such court."⁷⁹

Assistance to victims also includes the right to engage with a lawyer of one's own choice.⁸⁰ This also involves providing representational rights to the victim. However, in India's Criminal Justice System, it is the state who poses as the adversary in criminal cases. This is one of the biggest drawbacks of India's Criminal Justice System as it detaches the victim from the whole process, where the primary stakeholder becomes just a bystander in the judicial process. This also makes the victim disinterested as their concerns are overlooked, and primacy is given to the woes of society and that of the offender. One such victim was heard saying, "Why didn't anyone consult me? I was the one who was kidnapped, not the State of Virginia."⁸¹ A lot of the time, victims do not even want the offenders to be imprisoned and are ready to settle if they are

⁷⁶ Barcelona Panda (n 55)

⁷⁷ Dr. Pawankumar Mishra & Vivek Kumar, 'Criminal Justice Delivery System and Rights of Victim: Need for Introspection' (2016) 7 Indian Journal of Law and Justice

⁷⁸ *Ibid*

⁷⁹ Code of Criminal Procedure 1973, s 372

⁸⁰ Barcelona Panda (n 55)

⁸¹ 'Notable Quotables' (VC ARCHIVE) <https://www.ncjrs.gov/ovc_archives/ncvrrw/2005/pg1b.html> accessed 12 June 2023

given adequate reparation, and in any case, the imprisonment of the offender does nothing to benefit the victim and only promotes retributive justice.

CONCLUSION

Only a minimal effort of the government agencies has been devoted to making the Indian Criminal Justice System rehabilitative for the stakeholders of any criminal offence, and even less so for the rehabilitation of the victims. The Indian Criminal Justice System is vastly retributive in nature, providing imprisonment of the offenders as the only solution to the grievances of the victim. Imprisonment of the offender separates him from his natural surroundings and confines him to the prison atmosphere, mostly leading to adverse effects. Additionally, the delay in receiving justice and the high pendency of cases infringe on the right to seek redressal of both the offender and the victim. Moreover, the fact that the victim is unable to represent his own case often leads to a judgment that is less beneficial for the victim and more adversarial to the offender. This vitiates the right of the victims to receive rehabilitation, compensation, and justice in the true sense. Summing up, even after decades of independence, the Indian Justice System has remained somewhat stagnant, and today there is a need for a more robust structure that not only protects the victims of the crime but also the offenders, rehabilitating them both so that they can continue being the contributing member of the society.