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RIGHT OF VICTIM FOR COMPENSATION: AN ANALYSIS¹

AUTHORED BY - SAHIL JINDAL

Introduction

In a legal aid program organized in the year 2017, the then Chief Justice of India, Justice J.S. Khekar had noted, that “Ours is a strange country...While legal machinery works overtime for giving terrorists and hardcore criminals access to justice, there is hardly a mechanism to reach out to the victims. The terrorists manage to get better legal assistance, while victims of horrendous crimes often get a raw deal in India’s criminal justice system”.² To ally this system, the Hon’ble Justice had then demanded that the year 2017 be observed as the ‘Year Of Victims’. Thus, the demand for victim justice has been growing ever high since the term victimology was coined by Benjamin Mendelson in 1947.

Meaning: Victim

The connotations of term ‘victim’ vary in different legal, social, psychological or criminological contexts.

According to the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, Article 1, “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.”³

In 2008, by an amendment in the Code of Criminal Procedure, 1973, Section 2(wa) was added (now Section 2(1)(y) of the Bharatiya Nagrik Suraksha Sanhita, 2023), under which the term victim has been defined as 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”

¹ Sahil Jindal, Research Scholar at Panjab University, Chandigarh.

² Editorial, “Make-2017-a-year-for-providing-relief-to-victims-of-crime-cji-khekar”, The Hindu, 18 March 2017.

³ United Nations General Assembly Declaration of Basic Principles of Justice for Victim and Abuse of Power adopted in November 1985, Article 1&2, available at: <http://www.un.org/documents/ga/res/40/a4oro34.htm> (visited on January 20, 2024).

includes his or her guardian or legal heir.⁴

Meaning: Compensation

Tort law as evolved by the common law courts incorporates a golden principle of 'Ubi jus ibi remedium' which states that for each wrong there is a remedy and the standard of equitable justice requires that wrongs should not remain un-redressed. The compensation is the most grounded restorative measure in tort law and the guidelines relating to the affirmation of damages and compensation in tort are entrenched therein (largely on basis of common law cases). It incorporates the proportion of harms, quantum of harms, evaluation of harms, goal of the miscreant, vicinity of the reason and so forth.

Speaking in literal terms, compensation means the monetary remuneration which is given to amend for injury, with the purpose of that compensation being to provide or make good the losses suffered by the victim. It can be given either to the legal representative of the deceased (if that is the case) or the person who has sustained pecuniary/monetary loss. Generally, the term is limited to mean monetary compensation only, which is calculated by including the non-monetary head as well, thereby making pecuniary and non-pecuniary loss the bases for the calculation.⁵

Historical evolution of victim compensation

Initially, the premise of civil law depended upon the rule of installment of remuneration for private wrongs as a cure, and the arrangement of criminal law worked on the guidelines of rebuffing the people whose conduct is ethically guilty. In other words, the very goal of the civil law system was to provide compensation for private wrongs but whereas the system of criminal law aimed at punishing the persons whose behavior is morally culpable. Until the 1970s the criminal equity framework completely eclipsed the trauma faced by the victims. Towards 1970s' the previous disposition of unfortunate casualties marginally changed to an extent and now there was a little recognition of rights of victims as well. However it was not until the 1980s that a national development for "exploited people's rights" started demanding changes in the criminal equity framework. Presently this very distinction among common and criminal law has been blemished and remuneration is being granted as an issue of right not in criminal

⁴ N.Y. Paranjpe, *Criminology and Penology with Victimology*, 678 (Central Law Publications, Allahabad, 2011).

⁵ G.S.Randhawa, "Victimology and Compensatory Jurisprudence" 166-167 (Central Law Publications, Allahabad 2011).

law but rather likewise in established law, ecological law and for infringement of human rights and so forth.

Justification for Victim Compensation

Though by late 20th century there was a recognition (however subtle) that victims and their rights need to be considered for a true dispensation of justice but there was no consensus on why actually they need to be compensated. Two of the earliest authors in this area of law, pondering upon the justifications, made the case for four principal goals: “social welfare, social contract, symbolic, and instrumental.”⁶

In a layman terms compensation is an astute idea and if successfully assigned it holds the esteem between the hurt and the injurer. Harmed person's internal identity gets satisfied and he feels feeling of belongingness and security in the overall population. The justification for idea of compensation may be summed up as follows:-

- Socially, granting pay recognizes that victimization of any individual is a wrongdoing as it is only for a wrong that a compensation is demanded.
- Individually, the unfortunate individual's torment and agony are recognized which gives a psychological victory in the pursuit of justice. It acts as a morale boost to forget what has happened in the past.
- Economically, compensation can help exploited people in reconstructing their lives. This holds special significance where victim was a sole of a primary breadwinner for the family but for an act is unable to meet the ends. Here the compensation acts as a buffer for sustaining the needs of the family in general and individual victimized in specific.
- As a retributive as well as deterrence dimension, compensation individually paid by offenders can establish a type of discipline and discourage them as well as others from resorting to any of the acts in future. This also has implication for others with deviant attitudes to not to resort to any such act due to the fear of heavy compensation as well as penal consequences.
- Legally, the preamble stipulates Justice as an ideal in socio economic and political dimensions. By compensating an individual to an extent realizes justice and the legal

⁶D.Chappell and L.P. Sutton “*Evaluating the Effectiveness of Programs to Compensate the Victims of Crime*,” 468 (*Victimology: A New Focus, Volume II, Society’s Reaction to Victimology* 2003).

machinery also passes the small test of justice where justice should not only be done but also seem to be done.

- International convention on civil and political rights 1966, International convention on social economic rights 1966 as well as other specific conventions on rights of victims, which warrant the state to manage the human rights and distinctive rights of compensation also are valid justifications for victim compensation law in pursuance of Article 51 of The Constitution of India.

International Perspective On Victim Compensation

At the global level, a very important duty of criminal justice system towards the victims of crime was neglected until victimologists and advocates collectively voiced through the initiative of World Society of Victimology, 1979 and spearheaded the cause of victims and their rights in the criminal justice system.⁷ Recognizing that the rights of victims had not been adequately addressed, the General Assembly of United Nations, in 1985, adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power⁸ (Victims' Declaration) and it became a 'Magna Carta' for the victims broadly emphasizing four important rights namely, access to justice, restitution, compensation and assistance to victims of crime and abuse of power. The importance of including provisions whereby offenders may compensate the victims for their wrong doings have been duly recognized in this declaration in the following words: *"offenders or third parties responsible for their behaviour, should, where appropriate, make restitutions to the victim, their families or dependents. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of right"*.

According to 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*, "Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

⁷C.Rajkumar, K.Chockalingam, 'Human Rights, Justice and Constitutional empowerment' 444 (Oxford India, 2007).

⁸UN declaration on rights of victim at www.un.org/documents/ga/res/40/a40ro34.html (accessed on 11 January 2024).

- a) Physical or mental harm;
- b) Lost opportunities, including employment, education and social benefits;
- c) Material damages and loss of earnings, including loss of earning potential;
- d) Moral damage;
- e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.”⁹

Indian Perspective On Victim Compensation

The legislative framework related to the compensatory relief to victims of crime in India may be traced to the Code of Criminal Procedure, 1973, the Probation of offenders Act, 1958 and the Motor Vehicle Act, 1988:

Compensation under Code of Criminal Procedure, 1973

- Sub-sections (1) and (3) of Section 357 of the Code vest powers within the trial court to award compensation to victims of crime whereas similar power is conferred to the appellant and revisional court under sub-section (4). The Court may direct appropriation of the whole or any portion of fine recorded from the offender to be paid as compensation to the victim of crime.
- The compensation ordered under Section 357(1) may be for costs, damage or injury suffered or loss caused because of the death or monetary loss incurred because of the theft or destruction of property etc.
- Sub-section (3) further empowers the court, in its discretion, to order the accused to pay compensation to the victim of his crime, even though no fine has been imposed on him.
- Section 358(1) provides that compensatory relief to victims of unlawful arrest or detention by police without sufficient cause.
- Section 250 of the Criminal Procedure Code 1976, provides for compensation for accusation without reasonable cause.

Compensation under Probation of offenders Act, 1958

Section 3 of the Act provides for release of offenders after admonition in cases in which crime is punishable with “imprisonment for not more than two years or with fine or with both”. Section 4 provides for probation in some more serious cases, when offence is punishable with

⁹ Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation> (accessed on 24 January 2024).

death or imprisonment for life. While exercising its power under Section 3 or 4 of the this Act, the court may in its discretion grant “reasonable compensation” to any person for loss of injury caused to him by commission of offence and cost of the proceedings.

Compensatory Justice to Victims under certain other statutory provisions

- *The Fatal Accidents Act, 1855* provides for compensation to families (dependants) for the loss occasioned by the death of a person caused by an actionable wrong.
- *The Workmen’s Compensation Act, 1923* was enacted with a view to provide compensation to workmen working in industry.
- *The Motor Vehicles Act, 1988* gives “statutory basis to the liability to pay compensation in the certain cases on the principle of no fault”.

State Liability to pay compensation

In 1983, the Honorable Supreme Court recognized the need for state compensation in cases of abuse of power by the State machinery. In the landmark case of *Rudul Shah vs. State of Bihar*¹⁰, the Supreme Court gave order to the Government of Bihar to pay to Rudul Shah a sum of Rs.30,000 as compensation, which according to the court was of a “palliative nature” in a case of illegal incarceration of the victim for long years. In another landmark case of *D.K. Basu vs. State of West Bengal*¹¹, the Supreme Court observed that state compensation is mandatory in cases of abuse of power and said that “To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience”. In *Malkiat Singh v. State of U.P.*¹², the court awarded 5 lakh as compensation to the family of each victim. In this case, 10 Sikh youths were killed in a fake encounter by UP police. In *State of M.P. v. Mangru*¹³, the Hon'ble Supreme Court held that “the statutory liability to pay compensation to the complainant is on the accused. The State cannot be directed to pay compensation under Section 357”.

In the year of 2000, a committee was constituted under chairmanship of Dr. V.S. Malimath i.e. ‘*Committee on Reforms of Criminal Justice System*’. It submitted its report in 2003 under which many recommendations were made including those relating to the ‘Justice to Victims of Crime’. The report also recommended that victim compensation is a state obligation in all serious crimes “whether the offender is apprehended or not, convicted or acquitted”.

¹⁰ AIR 1983 SC 1086.

¹¹ AIR 1997 SC 610.

¹² AIR 1970 SC 713.

¹³1995 CriLJ 3852.

Judicial Response

The commitment of legal machinery to change the cases of casualties of wrongdoing is no less huge. The higher courts have assumed a predominant job in guaranteeing compensatory equity to the casualties of wrongdoing. While granting such compensatory alleviation, they have practiced due consideration and alertness to guarantee that individuals' confidence in legal process isn't broken and the 'unfortunate casualties' defensive rights are not denied to them. A portion of the milestone judgments of the Supreme Court guaranteeing remedial equity to casualties of wrongdoing mirror the developing array of legal arm of justice to ensure the privileges of exploited people.

The court shaped the jurisprudence by 'permitting compensation' under Article 32 and 226 of the Constitution searching for approval or security of significant rights. There exists a lot of circumstances where the compensation has been allowed by the Supreme Court to the setbacks of the bad behaviour.

The main case in the line was ***Prabhu Prasad Sha v State of Bihar***¹⁴ wherein the Hon'ble SC not just maintain the conviction yet in addition granted fine for Rs 3000 to be paid by him to the offspring of the perished. The court further associated the general guideline of condemning i.e. while passing a sentence the court must remember the proportionality among offense and punishment with allowing of pay and that while forcing the fine court must think about gravity of offense and the monetary state of the wrongdoer. In another case of ***Palaniappa Gounder v Sate of Tamil Nadu***¹⁵ the Supreme Court reduced the amount of fine imposed by the High Court from Rs 20,000 to Rs 3,000 and observed that:

*"It appears to us that the High Court first considered what compensation ought to be awarded to the heirs of the deceased and then imposed by way of fine an amount which was higher than the compensation because the compensation has to come out of the amount of fine. Apart from the fact that even the compensation was not fixed on any reliable data, the High Court, with respect, put the cart before the horse in leaving the propriety of fine to depend upon the amount of compensation."*¹⁶

Next in the land mark case of ***Sarwan Singh v Stateof Punjab***¹⁷ the Hon'ble Court observed

¹⁴AIR 1977 SC 704.

¹⁵1977 AIR 1323.

¹⁶ Ibid.

¹⁷1957 AIR 637

that:

“The object of the section therefore, is to provide compensation payable to the persons who are entitled to recover damage from the person sentenced even though fine does not form part of the sentence. Though Section 545 enabled the court only to pay compensation out of the fine that would be imposed under the law, by Section 357(3) when a Court imposes a sentence, of which fine does not form a part, the Court may direct the accused to pay compensation. In awarding compensation it is necessary for the court to decide whether the case is a fit one in which compensation has to be awarded. If it is found that compensation should be paid, then the capacity of the accused to pay compensation has to be determined. In directing compensation, the object is to collect the fine and pay it to the person who has suffered the loss. The purpose will not be served if the accused is not able to pay the fine or compensation for, imposing a default sentence for non-payment of fine would not achieve the object. If the accused is in position to pay the compensation to the injured or his dependents to which they are entitled to, there could be no reason for the court not directing such compensation. When a person, who caused injury due to negligence or is made vicariously liable is bound to pay compensation it is only appropriate to direct payment by the accused that is guilty of causing an injury with the necessary mens rea to pay compensation for the person who has suffered injury. And also: It is the duty of the court to take into account the nature of the crime, the injury suffered, the justness of the claim for compensation, the capacity of the accused to pay and other relevant circumstances in fixing the amount of fine or compensation. After consideration of all the facts of the case, we feel that in addition to the sentence of 5 years' rigorous imprisonment, a fine of Rs.3500 on each of the accused under Section 304(1), I.P.C. should be imposed.”¹⁸

The case of ***Harikishan and State of Haryana v Sukhbir Singh and others***¹⁹ is the second most important case after Sarwan Singh where court repeated its firm understanding once again in following words:

“The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than

¹⁸ Ibid.

¹⁹1988 AIR 2127,

one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by installments, may also be given. The court may enforce the order by imposing sentence in default.”²⁰

It is to be noted that compensation by the State for the action of its official was evolved by the Hon'ble Court against the doctrine of English law: "King can do no Wrong" and clearly stated in the case of *Nilabati Behra v State of Orissa*²¹ that doctrine of sovereign immunity is only applicable in the case of tortuous act of government servant and not where there is violation of fundamental rights and hence in a way stated that in criminal matters if there is violation of fundamental rights this doctrine is not applicable.

The case of *Bhim Singh v State of J&K*²² is another important case where Bhim Singh an MLA was arrested by the police only to prevent him to attend the Legislative Assembly, the Hon'ble Court not only entertained the writ petition of his wife but also awarded the compensation of Rs. 50,000 to be paid by the state.

Recent Case Laws

1) Archbishop Raphael Cheenath Vs State of Odisha²³

The Supreme Court of India in this case directed the Odisha Government to pay additional compensation to the victims of 2008 Communal Violence in Kandhamal District of Orissa. The Bench comprising Chief Justice TS Thakur and Justice UU Lalit here disposed the Writ Petitions which were filed in public interest seeking to highlight failure on part of State of Orissa in deploying adequate Police Force to maintain law and order in Kandhamal District of Orissa and in protecting innocent people whose human rights were violated after the unfortunate assassination of Swami Laxmanananda Saraswati and others on 23.08.2008 by Maoists.

2) Ravada Sasikala vs State Of Andhra Pradesh and ors.²⁴

The Supreme Court here set aside Hyderabad High Court's order that reduced the sentence imposed on a convict in an acid attack case to the period already undergone. A division bench

²⁰ Ibid.

²¹ 581 1993 SCC 2.

²² 1984 Supp (1) SCC 504.

²³ 2017 AIR 404.

²⁴ Criminal appeal no's 406-407 of 2017.

of Justice Dipak Misra and Justice R Banumati allowed the appeal filed by the victim in the case and directed the accused to pay a compensation of Rs 50,000 and the state to pay a compensation of Rs 3 lakhs.

3) S Nambi Narayan vs Sibby Mathews and others²⁵

This case is a landmark judgement of compensatory jurisprudence in India where the highest amount of rupees 50 lakhs were granted as compensation to one of the former I.S.R.O scientist Nambi Narayanan.

Law Commission's Report

Fourteenth Law Commission of India in its 154th report on the Criminal Procedure Code while expressing its deep concern for the crime victims had suggested a comprehensive victim compensation scheme particularly for those of custodial crimes, rapes, child-abuse etc. to be administered on the recommendations of a trial court by the legal services authorities constituted at the district and state levels under the Legal Services Authorities Act, 1987.²⁶ The report observed: "...In India the principles of compensation to crime victims need to be reviewed and expanded to cover all cases. The compensation should not be limited only to fines, penalties and forfeitures realized. The state should accept the principle of providing assistance to victims out of its own funds..."

Malimath Committee Recommendations

Regarding victim compensation the Malimath Committee has recommended that: "Victim compensation is a state obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organized in a separate legislation by parliament. The draft bill on the subject submitted to Government in 1995 by the Indian Society of Victimology provides a tentative framework for consideration."

The committee has also recommended that:

"The victim compensation law will, provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority. The law should provide for the scale of compensation for different offences for the guidance of the court. It may specify offences in which compensation may not be granted and conditions under which, it may be

²⁵ Civil appeal nos 6637-6638 of 2018.

²⁶ Available at http://bombayhighcourt.nic.in/libweb/commission/law_commission_on_20-11-2023_at_5:00_pm.

awarded or withdrawn.” It should be understood that victimology and justice for victims of crime is not exclusively a legal problem, it also has sociological, psychological, financial and ethical implications which need to be addressed jointly by experts working in these fields adopting a multidisciplinary approach. A community based joint Victim Impact Panel on the American pattern may be constituted comprising lawyers, judges, sociologists, psychologists, women activists, politicians etc. to decide victim’s rights and claims and their rehabilitation in the society.²⁷

Conclusion

Since ‘the future of criminology is victimology’, therefore, it is quintessential in our welfare state to support the victims and aware all the individuals of the society about the various schemes and provision so as to safeguard the probable victims of offences as well as to ensure remedy for the already suffering victims. This would be in consonance to the old adage of “prevention is always better than cure”.

However in the ultimate analysis it has to be the society which has to be the harbinger of all reforms and not everything can be posted for institutional interventions. In our common parlance we as active citizens must not only shed the ideology of victimizing anyone in any form; but also give our non-chalant attitude “chalta-hai culture” and oppose any victimization in any form in our surroundings. We must object, protest, and even enforce the legal machinery as active citizens, if ever, we happen to come across any mis-behaviour of a form that tends to victimize anyone.

Thus the aims of the constitution for a ‘just society’ and the vision of Gandhiji for ram rajya can only be established when there is “A VICTIMLESS SOCIETY”. To attain this objective all the citizens need to compulsorily obey their fundamental duties, the state needs to protect the fundamental rights under Part III of the constitution and also the directives under Part IV. The judiciary needs to actively ensure that victimizers are actively brought within the borders of law after giving co-equivalence to the sentiments of the victims. Thus a victimless society would not only be a true tribute to Gandhiji but also a reason for rejoice for the departed heavenly souls of our freedom fighters who brought independence with their ‘sweat and blood’ only to see India devoid of any miseries. Thus, we need to wake up before the souls of our

²⁷<http://www.shareyouressays.com/essays/justice-malimath-committee-recommendation-on-victims-of-crime-essay/121548> on 26-11-2018 at 6:00 pm

forefathers haunt us for being a dormant citizenry and ensure the ideal of '*satyameve jayate*' in its true spirit.

Suggestions & Recommendations

Thus, after making a thorough analysis, it is reflected that Indian position on victim compensation has positively changed during the last few decades. Few proposals can be summed up as under:

1. A more noteworthy dimension of injured individual support in the Indian Criminal Justice framework is required.
2. Evolving ideas like Victim Impact Statement as is available in USA will build injured individual's support. A Victim Impact Statement will contain the accompanying:
 - i. The physical, mental or enthusiastic effect of the wrongdoing.
 - ii. The mischief done to family relationship by the wrongdoing, for example, the departure of a guardians and so forth
 - iii) The requirement for compensation.
 - iv) The injured individual's sentiment of a proper sentence of a wrongdoer.
3. Another imperative measure which can be followed is to make remuneration a statutory ideal, with an arrangement ordering that the judges need to record purpose behind not granting pay.
4. State constituted Victim Assistance Fund can be considered as prompt alleviation which inter alia can help in forestalling further exploitation.

Thus, by incorporating these recommendations, we can ensure that the victim compensation rights are available to every individual thereby helping the victims to better navigate the financial and emotional impacts of their experiences. As these programs continue to evolve, they serve as a reminder of society's responsibility to care for those who have suffered through no fault of their own.