

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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Contemporary Issues And Challenges Of Legal Regime On Victim Compensation In India

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Abstract

Vide variety of socio-economic problems causes crime and violence in all segment of society across the globe and this indeed an hindrance to every peaceful society in one hand and enlarge number of victims on the other side. Crime against the individual and his property, crime against society and public property, crime against the ecology, environment and it biodiversity are major areas in which victimology has direct nexus. Various factors of multifaceted human endeavors are main reason in rapid growth of various crimes and victims like, child, adults, women, old age members. The crime and violence is the result manmade acts. Hence victims are not born but the result of either neglected or credible human action. Thus the scope of the term victim and victimology has been in progress. Victim of crime and violence has been contemporary global challenges and indeed, needs to be mitigated at local, national and global level through an effective legal framework. The culture of crime and violence has comprehensively been at peak at present scenario and it not only causes risk to human life but also been causing great harm to ecology of all corner of globe. Ongoing administration of criminal justice system throughout the world needs to be strengthening to meet the needs of peaceful and welfare state. The rights of an individual of every society shall be protected. Stringent and proactive legal framework and its effective enforceable initiatives should come into force. Thus, this research article will made meaningful effort to enlighten on various facets of global dimensions of victim and victim compensation approaches,

Keywords: crime and violence, victims, criminal justice, rights, legal framework

Introduction

Administration of criminal justice in 21st century is not only meant for imposing sentences to criminals but it also has true statutory spirit for providing adequate and appropriate justice to in protection of victims. Victimology as a global trend has changed sentencing system due to development of victimalogical approaches across the world. The term victim is not new one to our system. It has been embedded with the culture of crime since time immemorial and is multifaceted. There are categories of victims and all are victim of crime like crime against men and women, crime against property of an individual, society or public, crime against government, crime against environment etc. in all these categories of crime men and women, group of individuals, largest public society, biodiversity and environment becomes victims. Providing relief to the victims through pecuniary damages and ensure their rehabilitation becomes the judicial trend in India and also welfare of victims of crime has been reflecting in various central and state legislative enactments but the vital purpose of criminal justice has not been achieved yet. Victim of crime and violence has been contemporary global challenges and indeed, needs to be mitigated at local, national and global level through an effective legal framework. Ongoing administration of criminal justice system throughout the world needs to be strengthening to meet the needs of peaceful and welfare state. Stringent and proactive legal framework and its effective enforceable initiatives should come into force.

Who is victim?

Vide variety of socio-economic problems causes' crime and violence in all segment of society across the globe and enlarge number of victims on the other side. Various factors of multifaceted human endeavors are main reason in rapid growth of various crimes and victims like, child, adults, women, old age members. The crime and violence is the result manmade acts. Hence victims are not born but the result of either neglected or credible human action. Thus the scope of the term victim and victimology has been in progress. The culture of crime and violence has comprehensively been at peak at present scenario and it not only causes risk to human life but also been causing great harm to ecology of all corner of globe. Thus, the scope of victim always depends on the nature and extent of crime.

In response to the United Nations Declaration of Basic Principles of Justice for Victims

of Crime and Abuse of Power 1985¹, India made significant amendment to its Code of Criminal Procedure 1973 in 2008 and inserted and defined the term Victim under Sec 2(wa). Sec 2(wa) victim means 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 heir²;

Before Victim Compensation Scheme

Before the new victim compensation scheme provision come into force, Sec 357 of Criminal Procedure Code is in force and it imposes an obligation on criminal courts, and its appellate courts to award compensation to victims of various crimes and their relatives including victims of fatal accidents, at the time of awarding the sentence and fine, the amount of fine used to compensate the victim. Its operation is not effective to compare with present days. The provision as follows...

357. Order to pay compensation.—

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(a) in defraying the expenses of properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

¹ Prof. N.V. Paranjape, Criminology & Penology with Victimology, Pg No 740, 16th Edn, CLP 2016

² Criminal Procedure code, 973

(2) If the fine is imposed in a case which is subject to appeal no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section³.

Judicial Approaches and Victim Compensation

The landmark case on victims compensatory relief was **D. K. Basu v. State of West Bengal** the Supreme Court made the following observations “the monetary and pecuniary compensation is an appropriate and indeed an defective and sometimes perhaps the only suitable remedy for the redressal of the established infringement of the fundamental right to life of a citizen by the public servants. The state is vicariously liable to which the defense of sovereign immunity is not available and the citizen must receive the amount of compensation from the state, which shall have the right to be indemnified from the wrongdoer⁴”

In **Delhi Democratic Working Women Forum v. Union of India**⁵ case seven military jawans raped six village girls who were travelling by train. The court directed the Central Government to pay Rs.10, 000/- to each victim as compensation and ordered the names identity of victimized girls be kept secret to save them from social stigma. The court also directed National Women Commission to prepare rehabilitation scheme for such victims and expressed the need for setting up of a Criminal Injuries Compensation Board which should decide the quantum of compensation to be paid to victims of rape after taking into consideration their shock, suffering as well as loss of earning due to pregnancy and the expenses of child birth, if caused as a result

³ Criminal Procedure code, 1973

⁴ AIR 1997 SC 610

⁵ (1994) 4 SCALE 608

of rape.

In **R. Gandhi v. Union of India** the High Court of Madras upheld the order of district collector in which the district collector of Coimbatore had recommended that the State Government of shall pay Rs.33, 19, 003 as compensation to the families of Sikhs and others who were victims of arson and rioting in the wake of assassination of the former Prime Minister of India, Shri Rajeev Gandhi. Justice S.A Kadar observed “legally and morally by all cannons of fair play, by all principles of justice, equity and good conscience, the State of Tamil Nadu is bound to pay compensation to victims as assessed and recommended by the collector of Coimbatore⁶”

Victim Compensation Scheme

According to Sec 357A which was amended, inserted and came into force in 2009 is a comprehensive scheme for victim compensation and it imposes an obligation and empowers the central and state governments, trial courts, states and district legal service authorities, magistrates, police stations and hospitals to take appropriate and active action under this scheme. Indeed, this is the significant transformation in criminal justice. The scheme as follows...

357A. Victim compensation scheme.—

- (1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.
- (2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).
- (3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation

⁶ (2004) Cri.L.J. 510 (Mad)

awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

- (4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.
- (5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
- (6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit⁷.

The provision of Sec 357B was inserted into Criminal Procedure Code in 2013 and it enables the state governments to provide compensation to victims of Acid attack along with the fine imposed under Sec 326A of Indian Penal Code and such fine should be used for expenses of medical treatment of victims. The provision as follows...

357B. Compensation to be in addition to fine under section 326A or section 376D of Indian Penal Code.—

The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Indian Penal Code (45 of 1860).

The provision of Sec 326A has been inserted in 2013 to Indian Penal Code 1860 and it empowers the courts to impose the punishment along with the adequate fine which should be used for expenses of medical treatment of victims of Acid attack. The provision as follows.

326A. Voluntarily causing grievous hurt by use of acid, etc.—

Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures

⁷ Ibid

or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim: Provided further that any fine imposed under this section shall be paid to the victim⁸.

376D. Gang rape.—

Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this section shall be paid to the victim⁹.

Provisions of Sec 376DA and 376DB are inserted in 2018 through amendment to Indian Penal Code 1860 with the object to impose an obligation on government, courts to provide compensation to victims of rape under the age group of sixteen years to meet the medical expenses and for rehabilitation of those victims.

376DA. Punishment for gang rape on woman under sixteen years of age.—

Where a woman under sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this section shall be paid to the victim.

376DB. Punishment for gang rape on woman under twelve years of age.—

Where a woman under twelve years of age is raped by one or more persons constituting a group

⁸ Indian Penal Code, 1860

⁹ Ibid

or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this section shall be paid to the victim¹⁰.

357C. Treatment of victims.—All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code (45 of 1860), and shall immediately inform the police of such incident.

Sec 358 is the other provision of Criminal Procedure Code 1973 which empowers the criminal courts to award compensation to the persons who are groundlessly arrested. The provision as follows...

358. Compensation to persons groundlessly arrested.—

(1) Whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding 3 [one thousand rupees], to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

(2) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding 3 [one thousand rupees], as such Magistrate thinks fit.

(3) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

Victim Compensation Scheme in Karnataka

¹⁰Indian Penal Code 1860- Ins. by Act 22 of 2018, s. 6 (w.e.f. 21-4-2018).

Sec 357(1) of Criminal Procedure Code mandates all states to prepare a scheme in co-ordination with the Central government for providing funds for the purpose of compensation to the victims or their dependents who have suffered a loss or injury as a result of crime and to provide rehabilitation. In exercise of this powers conferred by Sec 357A of Code of Criminal Procedure, 1973, the government of Karnataka frames the scheme in 2011 called Karnataka Victim Compensation Scheme, 2011, for providing the funds for the purpose of compensation to victims or their dependents who have suffered loss or injury as a result of the crime and to provide rehabilitation to victims.

According to Sec 2(e) "Victim" means a person who himself has suffered loss or injury as a result of crime and require rehabilitation and includes his dependents who have suffered loss or injury as a result of crime and who require rehabilitation.

Victim Compensation Fund

Sec 3. Victim Compensation Fund:

- (1) There shall be a fund called Victim Compensation Fund.
- (2) There shall be credited to the said fund,
 - (i) All grants, subventions, donations and gifts made by the Central Government, State government, any local authority or anybody, whether incorporated or not or any person.
 - (ii) All other sums received by or on behalf of the victims compensation from any source whatsoever.
- (3) Except as otherwise directed by the state government all money credited to the fund shall be invested in any Scheduled Bank or in the State Government Treasury.

Sec 4. Application of the Victim Compensation Fund:

The fund shall be applied for carrying out the purpose of the scheme.

Sec 5. Grant by the state government: the State Government may every year make a grant to the fund of a sum equivalent to the expenses of the previous or probable expenditure requested by the State Legal Service Authority.

Sec 6. Eligibility for compensation:

A victim shall be eligible for the grant of compensation if,

(1) The offender is not traced or identified, but the victim is identified, and where no trial takes place, such victim may also apply for grant of compensation under sub sec (4) of Sec 357A of the Act

(2) The victim/claimant report the crime to the officer-in-charge of the police station within 48 hours of the occurrence or any senior police officer or executive magistrate or judicial magistrate of the area;

Provided that the District Legal Service Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in reporting.

(3) the victim/claimant shall co-operate with the police and prosecution during the investigation and trial of the case.

Sec 7 deals on procedure for grant of compensation, Sec 8, order to be placed on record, Sec 9 limitation: Sec 10 Appeal

Schedule of the Victim Compensation Scheme¹¹:

Sl. No	Particulars of loss or Injury due to Crime	Maximum Limit of Quantum of Compensation
1	Loss of Life a) 40 years age or below b) 40 years to 60 years c) 60 years and above	Rs. 3.00 Lacs to the next of kin Rs. 2.00 Lacs to the next of kin Rs. 1.00 Lacs to the next of kin
	Note: in case of death of a victim, expenses incurred for medical treatment, before the death, up to a maximum of Rs. 25,000/- and a maximum of Rs. 20,000/- may be given as funeral expenses, to the next kin of the victim in case of victim's death.	
2	Loss of any Limb or part of body resulting 80% or above handicap due to any crime including Acid Attack	Rs. 3.00 Lacs
3	Loss of any limb or part of body resulting	Rs. 2.00 Lacs

¹¹ Modified Karnataka Victim Compensation Scheme 2013

	40% and below 80% handicap due to any crime including Acid Attack	
4	Loss of any limb or part of body resulting below 40% handicap due to any crime including Acid Attack	Rs. 1.00 lacs
5	Rape of Minor	Rs. 3.00 lacs
6	Rape of other than Minor	Rs. 1.5 lacs
7	(a) Rehabilitation necessitated due to damage to the house etc, 80% or more (b) Rehabilitation necessitated due to damage to the house etc, less than 80%	Rs. 50,000/- Rs. 25.000/-
8	Grievous injury other than injuries mentioned above	Rs.20,000/-
9	Women and child victims in cases like human trafficking who themselves or their dependents have suffered separation, dislocation and disturbance	Rs.1.00 lac

As per the Karnataka State legal Service Authority report of 2019-2020 contains statement of payment made by KSLSA under Victim Compensation Scheme that, Rs.10, 15, 48, 225 used to provide compensation to 469 victims of various crimes across the state. Different victims of crimes as identified by KSLSA for compensation as are follows... Murder of women, murder of men, rape on minor, Murder of their Son/Husband, Rape, Attempt to Murder on Men, Injury to Men and Women, Suicide of Men & Women, Abduct of Minor, Attempt Rape on Minor, Sexual Harassment on Minor, Rape and Pregnant of Minor, Sexual Abuse on Minor, Men 75% Disability, Grievous Injury on Men and Women, Women Loss of Vision, Men Handicap, Rape and Murder of Minot, Rape and Robbery, Sexual Assault on Minor, Sexual Assault on Minor & for the baby born to her, Murder of his Daughter, Death of Sister and Brother-in-law, Death of Men due to acid attack, Women Burn Injuries, Human Trafficking of Women, Attempt to Suicide, Rape on Minor Mentally Retarded, Murder of his Wife, Sexual Intercourse on Boy, Suicide of Minor Girl, Mental Harassment on Minor,

Unnatural Sex with Minor boy and Murdered¹².

Recent past the division bench of Karnataka High Court headed by Chief Justice Ritu Raj Awasti directed to government of Karnataka to release at the earliest Rs. 7 Crore to Karnataka State Legal Service Authority to effectively implement and maintain Victim Compensation Scheme in the state¹³.

Role of National Commission for Women:

National Commission for Women in its letter to Madhya Pradesh DGP on the ghastly crime in which a tribal women was set on fire over land dispute in Guna District of Madhya Pradesh, describing the crime as ghastly in nature and extremely shameful and said “the audacity of the criminals to commit such horrific crime in a broad daylight shows police is not doing their work efficiently. Therefore, you are required immediately direct the police officer concerned to arrest all the accused and file an FIR against them under the provisions of Indian Penal Code along with other relevant provisions of law. The victims must be provided with the best medical treatment facility free of cost¹⁴.”

The Commission come across through the one of the news report that, the victim and her husband had given an application seeking protection from the accused men on June 6 but no action was taken on their request, and hence, the Commission said further that, stringent action should be taken against erring police officer who failed to take the swift cognizance of the matter, if the allegations leveled are found to be true. The victim is entitled for the compensation under the Victim Compensation Scheme as per Sec 357-A of Code of Criminal Procedure, for the injury/loss suffered by her. The action taken must be appraised to the Commission within five days¹⁵.

Conclusion

¹² Karnataka State Legal Service Authority, Bengaluru, 2019-2020 statement on victim compensation

¹³ Times of India-Jan 29, 2022, 13.09 IST

¹⁴ <https://www.freepressjournal.in/bhopal/ghastly-and-shameless-ncw-on-tribal-woman-set-on-fire-in-mp>

¹⁵ Ibid

The Victim Compensation Scheme 2011 is one of important and significant scheme with respect to victim compensation. Still there is lack of awareness to members of our society about this scheme. Victims are still left out from the benefits of the scheme due to non-reporting of criminal cases. Even in reported cases also victims are not aware of these benefits and been suffering. The object, purpose, letter of spirit and fruit of the scheme should reach eligible individuals. The responsible judicial institutions, state governments, district and state legal service authorities and concerned stakeholders should take meaningful initiatives to educate the society through awareness programs

