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# **REHABILITATION OF VICTIMS OF HUMAN TRAFFICKING THROUGH COMPENSATION: A COMPARATIVE ANALYSIS BETWEEN INDIA AND THAILAND**

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## **Introduction**

The present idea of human rights in the national and international legal framework has not evolved overnight. Humankind has gone through a lot of struggle to protect the rights of humans, which eventually has developed the concept of human rights. World has experienced a lot of incidents where the very existence of the human rights was questioned. Going back to the pages of history we can see, atrocities of Hitler, attack on pearl harbour, atomic blast on Hiroshima and Nagasaki, racial discrimination and what not.

However, these incidents opened the eyes of the world at large. At domestic level, today majority of the countries have given recognition to the human rights, by framing laws supporting the same. At the international level we have United Nations, an international organisation that was formed after the Second World War, to maintain peace and cooperation among the countries. UN gave birth to many conventions and treaties, that focused upon various kinds of rights and human rights are one of the kinds.

However, the focusing point which still remains is, even after the formation of so many laws, human rights are still being violated around the world. This shows either the inefficiency of the laws or lack of implementation. This further raises the question that, is the responsibility or obligation of the government only limited towards the formation of the laws and not the proper achievement of the purpose for which it is made.

Human trafficking is considered as the third most common crime in the world, after drugs and arms trafficking. As per report of United Nations office on drugs and crime, trafficking of

women and girls is mostly done for sexual exploitation and men are mostly trafficked for forced labour.<sup>1</sup>

In India, the data regarding the crime and victims of human trafficking can be gauged from the latest report of the National Crime Records Bureau (NCRB). As per the report, India observed a total of 1,714 cases of human trafficking in 2020, however in 2019, 2208 cases were reported. This shows a decline of 22.4%. The report shows that 4,709 victims were trafficked, out of which 2,222 were children and 2,487 were adults. The data further showed that the majority of the victims were trafficked for sexual exploitation. Other purposes are forced labour, forced marriage, child pornography and domestic servitude.<sup>2</sup>

This brings the focus on the victims of human trafficking, who have faced such heinous crimes. These suffering would have had a serious impact on the physical as well as the mental health of the victim and their dependents. The impact would not only be on the health but also on the social status and the well being of the victims. This points towards the importance of studying the laws and their implementation for the rehabilitation of the victims of crime.

This paper focuses upon the laws and their efficiency and adequacy in providing compensation for the rehabilitation of the victims of human trafficking. Another important thing, if being human, people have the rights against human trafficking, then being human do they not have the right to be compensated properly if their human rights have been violated. If a victim of human rights is not compensated properly then is that not the violation of their human rights? Is government not obligated to provide sufficient compensation to the victims? Can the improper compensation or no compensation be considered as the further violation of human rights?

This paper focuses upon answering all these questions. The focus is on the compensation scheme of the government for the victims of human trafficking, the laws we have in India for such compensation and how far are these laws and schemes effective. Further a comparative analysis has been made with Thailand, as both the countries derive their obligation to provide rehabilitation to the victims of human rights violation, from International laws being a member of UN and being signatories to many conventions on human rights, and also from their respective domestic laws.

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<sup>1</sup> Global Report on Trafficking in Persons 2018, UNODC, Vienna, p.10

<sup>2</sup> Crime in India 2020, NCRB, Ministry of Home Affairs, Government of India, p. 973-74

## **Indian laws and schemes regarding compensation of victims of crimes**

Compensation as a part of rehabilitation of the victims of crimes gained greater importance in the Indian justice system majorly after independence. Till 1974, section 545 of the code of criminal procedure, 1898, provided the compensation to the victims. As per this section compensation to the victim was allowed only when the accused was imposed with the fine by the court. However the said code has now been repealed and has been replaced by the code of criminal procedure 1973 (hereinafter referred to as CrPC). Section 357 of CrPC provided for the compensation to the victims even when the accused has not been imposed with fine as a punishment.<sup>3</sup>

Thereafter, the Code of Criminal Procedure (Amendment) Act, 2008, inserted section 357A in CrPC in 2009. This amendment resulted in the formation of victim compensation scheme (VCS). As per this scheme the Indian states are mandated to provide compensation to the victims of crime, for the loss and injuries suffered by them. This section obligates the state governments to prepare VCS for their respective states, with an aim to ensure rehabilitation of the victims and their dependents through compensation.

District legal service authority (DLSA) or State Legal service authority (SLSA) is conferred with the duty to decide the quantum of compensation, as per the minimum and maximum limit over the compensation prescribed by their respective states and to pay the compensation. Compensation under CVC can be provided in the following situations:-

1. Where the compensation provided by the accused under section 357 of CrPC, is not adequate for the proper rehabilitation of the victims or their dependents.
2. Where the acquittal or the discharge has been granted to the accused, however the victim still needs to be rehabilitated.
3. Where the offender is not traced or identified.

In first two situations the compensation can be provided only by the recommendation of the court, however in the third case the victims or their dependents can reach out to DLSA or SLSA with an application for the compensation.

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<sup>3</sup> Section 357(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.”

However a lot of disparity has been observed in the quantum of compensation provided for different crimes in different states. Thus in order to create uniformity in the quantum and to enhance the efficiency of the VCS, Union ministry of human affairs formed Central Victim Compensation Fund (CVCF).

Other than VCS, there are other special laws as well, that provides for the compensation to the victims. Some of these special laws are, Probation of Offenders Act, 1958, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the Workmen Compensation Act, 1923, the Protection of Women against Domestic Violence Act, 2005, the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and others.

### **Effectiveness and efficiency of section 357 of IPC**

*"Tears shed for the accused are traditional and trendy but has the law none for the victims of crime, the unknown martyrs?"*

Hon'ble Justice V. R. Krishna Iyer

Former Judge, Supreme Court of India

From the judgments of the Supreme court one thing which can be analyzed is that the India criminal courts have more than often shown a reluctant tendency in using section 357 of IPC.

In Hari Kishan & Anr v. Sukhbir Singh and Ors, 1988, the Supreme Court observed that, *"It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused."*<sup>4</sup>

The Supreme Court in Ankush Shivaji Gaikward v. State of Maharashtra, 2013 made the following observation –

*"Section 357 confers a duty on the Court to apply its mind to the question of compensation in every criminal case. The victim would remain forgotten in the criminal justice system if despite Legislature having gone so far as to enact specific provisions relating to victim compensation, Courts choose to ignore the provisions altogether and do not even apply their mind to the*

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<sup>4</sup> AIR 1988 SC 2127

*question of compensation. It follows that unless Section 357 is read to confer an obligation on Courts to apply their mind to the question of compensation, it would defeat the very object behind the introduction of the provision.”<sup>5</sup>*

### **Effectiveness and efficiency of Victim compensation scheme(VCS)**

As per the reports of NHRC on the rehabilitation of victims of human trafficking, out of 105 victims of human trafficking, from their sample population, only 2% of the victims have received compensation under VCS. The report also showed that none of the parents of the victims have received anything from the scheme.<sup>6</sup> This shows extremely low level of coverage of the scheme.

Considering the effectiveness of VCS at micro level the report showed the data collected from two victims of human trafficking, who received compensation through VCS. One of the victims received rupees 30,000 from DLSA. Such some of money was sufficient to meet the short term needs of the victim, like medical expenses, however it was reported to be inadequate for meeting the long term needs of the victims. The other victim received rupees 1,05,000 as compensation. Such some of money helped the victim to meet both short term and long term needs.

This shows that the effectiveness of the scheme is directly proportional to the coverage of the scheme and the quantum of compensation. The low coverage of the scheme has already been highlighted. Coming to the issue of quantum of the compensation, it is found that, though as per CVCF guidelines the minimum prescribed compensation for rehabilitation of victims of crime is one lakh, under VCS all the states have set put their own limits of compensation. As a result of this there is no uniformity in quantum of compensation. In Rajasthan the maximum limit of compensation is 1 lack only, irrespective of the fact that CVCF has prescribed it as the minimum limit.

Another area of concern is the timeline. As per section 375A of CrPC, The SLSA and DLSA are required to award the compensation within two months of receipt of the recommendation from the court. However the reality is that among those victims who have received the

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<sup>5</sup> (2013)6 SCC 770

<sup>6</sup> Available at <https://nhrc.nic.in/sites/default/files/Report%20Trafficking%20HDS%20NHRC%20Final.pdf>

compensation under VCS, 71% of the victims have received the compensation in one to two years and it took two to three years for 27% of the victims to get the compensation.<sup>7</sup>

### **Provisions in Thailand regarding the compensation to victims of human trafficking**

Thailand has seen the constant increase in the crime of human trafficking. In Thailand the rights of the victims of crime have attained major attention more or less recently. Lately some observable improvements have been noted in the legal framework of Thailand, with an aim to deal with the issue of human trafficking in a better manner. The Thai government has set up a state fund called anti- human trafficking fund with the objective of providing compensation and legal aid to the victims of crime. Section 33, 34, 35, 37 of The Anti-Trafficking in Persons (Act 2008), embody the entire scheme for the grant of compensation for the victims of human trafficking. Certain guidelines have also been drafted by the Ministry of Social Affairs and Human Security for the systematic calculation of the compensation.

Furthermore Section 245 of the Constitution of Thailand provides that:

*“In a criminal case, a witness has the right to protection, proper treatment and necessary and appropriate remuneration from the State as provided by law. In the case where any person suffers an injury to the life, body or mind on account of the commission of a criminal offence by other person without the injured person participating in such commission and the injury cannot be remedied by other means, such person or his or her heir has the right to receive aid from the State, upon the conditions and in the manner provided by law.”<sup>8</sup>*

Though Thailand has adopted a number of victim centric approaches, still the status of victim compensation has not reached a satisfactory level. It has been reported that in 99% of the cases human traffickers have not paid the compensation to the victims. Out of 1335 cases of human trafficking in Thailand only in 5 cases the victims have got the compensation.<sup>9</sup>

Furthermore there exists very low level of cooperation between the Anti-Trafficking in Persons Act and the Anti-Money Laundering Office (AMLO). Such lack of cooperation has proved to be a hindrance in victim's claim to compensation. The point of issue here is that, the money which would be seized by the AMLO would be confiscated entirely by the state, leaving no

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<sup>7</sup> Ibid. p. 4

<sup>8</sup> Section 245, Constitution of kingdom of Thailand.

<sup>9</sup> Available at <https://news.trust.org/item/20191014233418-xu7i3/>

scope for the victim compensation funds. In 2016, AMLO managed to seize 784 million THB from the human traffickers, however not a penny was used for compensating the victims of the crime.<sup>10</sup>

Such failure to provide the compensation to the victims of crime would again put them in the danger of human trafficking. One more issue to be taken into the consideration is that for those victims who have got the compensation the entire compensation process took a lot of time.

### **Shortcomings of the laws and schemes of both the countries**

1. Only few numbers of victims get to have the benefit of the government schemes for the compensation. This means that the coverage of the schemes and the fund of the government is very small. This results in lack of efficiency and effectiveness of the laws and the schemes.
2. Majority of the victims of human trafficking are poor and uneducated. Because of this they lack awareness about their rights. These further results in lack of awareness about the laws for the protection of the same.
3. The enquiry and the process of compensation takes a lot of time.
4. While granting compensation to the victims the long term needs of the victims have rarely been taken into consideration.
5. There is no punishment for the human traffickers, if they fail to comply with the orders of the court to pay compensation to the victims.

### **Conclusions and suggestions**

Both the countries have made efforts to make laws for providing the compensation to the victims of human trafficking. However this paper shows the inefficiency of these laws and schemes. The government of both the countries is required to take even more effective measures to provide the compensation to the victims for their rehabilitation.

I believe that getting compensated for the sufferings caused by the victims of human trafficking itself is the human right of the victims. And it is the duty of every state to protect this human right of the victims by providing them sufficient compensation.

Hereby I would like to suggest that:-

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<sup>10</sup> Available at <http://www.rapid-asia.com/blog/lack-compensation-human-trafficking-victims-thailand/>

1. SLISA, DLISA, police, lawyers and judges should make sure that the victims of the human rights are getting sufficient compensation that would meet both the short term and long term needs of the victim.
2. Victims are required to be made aware of their right to compensation and about the laws and the schemes through which such compensation can be availed. Information about the same should be disseminated through campaigning, work shops or social media.
3. Limits on quantum of compensation should be uniform in all the states.
4. The compensation should be awarded within a reasonable time.
5. Procedure for the filling of application for the compensation should be simple.
6. A monitoring mechanism should be formed to make sure that all the victims have got sufficient consideration.