
VICTIM COMPENSATION SCHEME ACROSS CULTURES: A SOCIO LEGAL TRANSITORY DICHOTOMY

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ABSTRACT

The seeds of victims' rights germinated in India during the last few decades following the United Nation's Declaration of Basic Principles of Crime and Abuse of Power, 1985. Since then, the realization that the victim lies at the core of the entire criminal justice process dawned, whereby efforts were made to ameliorate their conditions. One of the principal aspects of victim support and assistance was compensation for injuries which was read as an integral part of 'right to life' by the Indian judiciary. Subsequently, however, the need to introduce the mechanism of statutory compensation led to the incorporation of section 357A in the Code of Criminal Procedure, 1973 making it obligatory for the state to provide compensation to the victims or dependents who have suffered loss or injury as a result of crimes and require rehabilitation. Almost all states of the country accordingly set up Victim Compensation Schemes to provide for adequate compensation. The paper seeks to draw a comparison between the compensation schemes of India and the United States of America and suggest alternatives to implement the same in the Indian context.

Keywords: Victim, Compensation, Perpetrator, Assistance, Life

Introduction

The purpose of the criminal justice is to protect the rights of the individuals, society and state from the criminals by punishing the accused for violating the law. In case the accused is found guilty, he/she is punished with imprisonment and kept in prison with an object of reforming him/her.¹ While the entire focus of the law is on the offender, to protect his/her rights, to punish him/her and thereby bring about his/her reformation and rehabilitation with all the resources and goodwill available through courts and other agencies, the victim, more often, is left to fend for himself/herself with little or no assistance coming his/her way. The violation of his/her rights, the invasion of his/her dignity, the actual losses incurred by him/her do not constitute matters of concern for anyone, but himself/herself. The advancement of victim compensation played a major issue in the victim support movement.² Part of the dilemma in opinion might be traced to the fact that a lot has been written through these years about arrangement and function of victim compensation. Victim compensation is a form of victim support in meeting physical emotional and society related need of the victim. It has played a crucial role in victim recovery. Not much attention is given on the role of victim compensation in future victim support efforts.

Concept of Victim Compensation

In today's era the victimology is not only limited about studying penal relation. But compensation to victim is also gaining importance. Any person who has suffered damage he or his dependants are entitled to get compensation. In the medieval era criminal or his kin used to give compensation for any wrongful act. If the accused is not in the capacity to pay the compensation, then the state is duty bound to pay the compensation.³

"Ubi jus ibi remedium is a principle in the of torts which says that states that there is no wrong without a remedy and the rule of law demands that one should not be disturbed by wrongdoing.

Compensation is a mandatory measure in tort law and the principles governing the compensation and determination of damages are very well acknowledged in the tort law.

¹ SAHELI v. Police Commissioner, Delhi, AIR 1990 SC 513.

² Paranjape, N.V., Criminology & Penology with Victimology (15th ed.) Central Law Publications, p.680.

³ Bajpai, G., & Gauba, S. (2016). Victim Justice: A Paradigm Shift in Criminal Justice in India (1st ed.). New Delhi: Thomson Reuters.

The term “Compensation” in the current scenario means repayment for the loss suffered. Anything that is given to make things equal is called compensation, a thing that is given to make reparation for the loss, repay, recompense or pay. It can be seen as a liability of the society which is of civil. Compensation, is different from damages is used for any unlawful act, which cause the damage or loss to any person. The meaning of compensation is the money is given for compensating any damage or loss. The main objective behind the compensation is to make the loss bearable to the victim either the person has suffered financial loss or not. The crux of providing compensation is to provide some sort of help to the victim who has suffered the damage either it be physical, psychological or emotional and supports the victim to recover from the trauma as soon as possible and works as a helping hand.⁴

The Indian Constitution, the supreme law of the land, enunciates no specific provision for victims. However, Part IV, Directive Principle of State Policy, Art 41 and Part V, Fundamental Duties, Art 51A lay down the duty of the state to secure “the right to public assistance in cases of disablement and in other cases of undeserved want” and to “have compassion for living creatures” and “to develop humanism” respectively. These articles have been interpreted in an expansive manner to find support for victims of crimes. The right to compensation has also been interpreted as an integral part of right to life and liberty under Art. 21 of the Constitution. As early as in 1983, the Supreme Court recognized the petitioner’s right to claim compensation for illegal detention and awarded a total sum of Rs. 35000 by way of compensation.

Besides, there are provisions in a number of legislations for payment of compensation to the victim, either by the trial court or by specially set up claims tribunal (Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985; Consumer Protection Act, 1986; Fatal Accidents Act, 1855; Indian Airlines Non International Carriage (Passenger and Baggage) Regulations, 1980; Indian Railways Act, 1989; Merchant Shipping Act, 1958; Motor Vehicles Act, 1988; Probation of Offenders Act, 1958; Protection of Women from Domestic Violence Act, 2005; Sexual Harassment (Prevention, Protection and Redressal) Act, 2013).⁵ Thus, under the Probation of Offenders Act, 1958 while releasing an accused on probation or admonition, the court may order the offender to pay compensation and cost to the victim under s. 5 of the Act. Similarly, s. 250 (compensation for accusation without reasonable cause), s. 357 (order to pay compensation out of fine or even without a sentence of fine), s. 358 (compensation up to Rs.

⁴ Chakrabarti, N. K., & Dube, D. (2017). *R. Deb’s Principles of Criminology, Criminal Law and Investigation* (4th ed., Vol. 1). Kolkata: S.C. Sarkar.

⁵ Chattar Singh v. Subhash, 2 ILR 470 (Delhi 2011).

100/-to persons groundlessly arrested) and s. 359 (order to pay cost in non-cognizable cases) of the Cr. P. Code, 1973, provide for payment of compensation and costs to the victims of crime under different circumstances. Section 357 Cr.P.C. 1973, specifically empowers a court imposing a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, in its discretion, inter alia, to order payment of compensation, out of the fine recovered, to a person for any loss or injury caused to him by the offence. However, such compensation to victims can be awarded only when substantive sentence is imposed, of which fine forms a part, and not in cases of acquittal. Under section 357 (3) Cr.P.C. 1973, however, the court is empowered to award compensation for loss or injury suffered by a person, even in cases where the fine does not form a part of the sentence. In other words, the power to award compensation is not ancillary to other sentence, but it is in addition thereto.⁶

Statutory Scheme for Victim Compensation in India

Amidst the increasing concern for compensation to victims of crimes, section 357A was inserted in 2009 (Code of Criminal Procedure, 1973), to give effect to Victim Compensation Schemes (VCS). The scheme made way for an institutionalized payment of compensation to the victim by the state for any loss or injury caused to him by the offender. The responsibility has been imposed on the states to create and maintain a fund for the purpose. In cases where compensation paid by the accused is inadequate or no such compensation is payable on account of acquittal or discharge of the accused or the offender not being traced or identified, the VCS is applicable. Such payment may also be allowed on the specific recommendations of the court, in addition to the compensable payable under s. 357 Cr.P.C., (1973). Section 357B Cr.P.C., (1973) specifically provides that in cases of acid attack (s. 326A Indian Penal Code, 1860) and gang rape (s. 376D Indian Penal Code, 1860), the compensation payable by the state shall be in addition to the payment of fine to the victim under the said sections. The District Legal Services Authority (DLSA) or State Legal Services Authority (SLSA) has been authorized to decide the amount of compensation to be awarded to victims under the scheme, subject to the maximum limit prescribed by the State. In addition to payment of compensation, section 357A also attempts to respond to the immediate needs to the victims for first aid or medical benefit as well as any other interim relief, as may be required.⁷

⁶ Consumer Protection Act, 2019.

⁷ Gaur, K. D. (2015). *Criminal Law and Criminology* (3rd ed.). New Delhi: Universal Law Pub. Co.

The procedure in all states has been kept simple to help the victims. Thus, where a recommendation is received from the court or an application is made by the victim, the DLSA/SLSA has to examine and verify the facts raised in the claim and after due inquiry, has to decide on the grant of compensation. It is a time bound procedure with most states specifying two months as the statutory period, except for Arunachal Pradesh which provides for 30 days' time to decide the claim (cl. 6(iv) Arunachal Pradesh Victim Compensation Scheme, 2011). The VCS, Delhi and VCS, Goa clearly provide the documents and materials which are to be submitted to support the application (cl. 5 Delhi Victims Compensation Scheme, 2011; cl. 5 Goa Victim Compensation Scheme, 2012). These include copy of the FIR (First Information Report) or complaint to magistrate, medical report, death certificate, where applicable, copy of judgment in specific cases. For other states, it has not been mentioned categorically which may make it difficult for victims to sustain their claim. In the CR.P.C 1973 has authorized the courts in which criminal matters are tried in India for ordering the compensation to the person who has suffered loss or damage. Section 357 deals with compensatory provisions.⁸

Under Section 357(1) it is given:

“Whenever under any law in force for the time being a criminal court puts fine... or a sentence (including a sentence to death) of which fine forms a part, the court may, when imposing judgment, order the whole or any part of the fine recovered to be applied:

- a) In covering expenses properly incurred in the prosecution;
- b) In the payment to any person of reimbursement for any loss or injury caused by the offence when compensation is, in the view of the court, restorable by such person in a civil court;
- c) When any person is prosecuted of any offence for having caused the death of another person. Under the Fatal Accident Act, 1855, another person is compelled to pay compensation to a person entitled to receive compensation from a person who has been compensated for such a death.”⁹

Under section 358 gives power to a magistrate to force or give an order to a person to pay or give compensation not more than Rs1000 to person for making police officers to arrest that

⁸ Manju Bhatia v. N.D.M.C. AIR 1998 SC 223.

⁹ Ibid.

person in wrong case. Likewise, section 359 of Cr.P.C directs to pay compensation in non-cognizable cases.

It can be seen clearly that only small action is possible under section 357 of the Cr.P.C in case of compensation to a victim of a crime. And it has been proved through various restrictions and limitations. Some restrictions given in the section are the capacity of the wrongdoer of paying the compensation amount its ability to pay acts as a obstacle for the victim from getting the compensation.

The state government on the direction of Supreme Court made certain modification to sec 357 A of CrPC in the year 2008 for the benefit of V.C.S. The amendment provided for various compensatory measures and the main objective of the modification of 2008 was to broaden the definition of victim as defined under sec. 2(wa) of crpc. In context to the amendment made in 2008 all the Indian states came up for the benefit and providing remedy to the victim with the help of victim compensation scheme. In lieu of the following amendments and the initiative taken by the various states, the Delhi govt. also issued an order giving 200 crores to victims of various types of offences like rape, acid attack.¹⁰ These schemes of victim compensation was effectively addressed and implemented which was seen in various case laws that came up. In one of the cases *Delhi Domestic Working Women's Forum v. Union of India and others, Ankush Shivaji Gaikwad v. State of Maharashtra, and other cases*. Where the court implementing the order of govts gave the compensatory relief to the victim. Owing to the situation the 2008 amendment also ratifies sec 372 of crpc and added certain rights to be given to the victims of such kind of offences. Some of the rights include “1. Acquittal of criminated, 2. Condemnation for a trivial offence or little legal in nature, and; 3. Not satisfied with the amount of compensation given before.”¹¹

Implementation of Victim Compensation Scheme in relation to the Code

The victim compensation scheme which has been started by various states under the direction of the supreme court for the protection of the victims against the mental harm and dependents of the victims against the offences under sec. 357A of Cr.P.C. Further the sec 357A providing for compensation to the victims has been categorised into various parts which are as follows: -

Sec 357A (1) provides for compensation to be given to either the victim or his legal heirs who have suffered misfortunes or faced any kind of discrimination by the society should be given an

¹⁰ Supra Note 4.

¹¹ https://www.unodc.org/pdf/criminal_justice/UNODC_Handbook_on_Justice_for_victims.pdf last visited on 18.04.2022.

opportunity to recover under the formation of victim compensation scheme as implemented by the states. The criteria of compensation for victims which has been laid down in sec 357A (2) is based upon sub sec (1) itself. The district legal service authority which referred as DALSA when ordered by any court under its judgement have the power to decide on the amount of compensation to be paid to the victim. This power has been granted to the district legal authority as expertise in understanding the nature and effect on the victim for granting the proper quantum of compensation.¹²

Compensation: The Purpose

When a victim gets compensation for any crime, he has suffered it becomes very important to the person because it symbolizes justice towards the victim and it can be seen as a financial help for the victim.

- In the society when compensation is awarded it shows that there is something wrong that is done by the victim.
- The compensation would work as a step towards helping the victim to overcome the trauma and the damages that is suffered by the victim at individual level.
- The compensation helps victims in transforming their lives.

Compensation can be provided by both offender as well as the state as the case may be. In some state there are programs which are state administered in cases of violent crimes. In some cases, it is not necessary that the offender is caught or known in those cases it is helpful if there is a state funded program to give compensation to the victims.¹³ Basically, state programs are biased un formal than any other civil proceeding. There may be different sources from which the victim compensation funding can be done these sources are confiscated property, fines, tax revenues and other funding of the state or any private institution.¹⁴

Victim Compensation Scheme in the United States of America

1. Assessing the Requirements and Resources of the Jurisdiction

¹² Ibid.

¹³ Raineri, A. S. (1995). Re-Integrating the Victim into the Sentencing Process: Victim Impact Statements as an Element of Offender Disposition. *Queensland U. Tech. LJ*, 11, 79.

¹⁴ Sarkar, S. (2010). The Quest for Victims' Justice in India. *Human Rights Brief*, 17(2), 3.

When initiating a victim assistance programme, an assessment should be made of the existing needs and available resources in the jurisdiction. This assessment should be updated as needed. The goals of the assessment could include the following:

- To determine the rate of victimization;
- To determine the types of victimization;
- To obtain a general understanding of the needs of victims in the jurisdiction;
- To assess the existing resources available to meet these needs;
- To determine what problems or barriers impede victim participation in the criminal justice system;
- To determine what assistance is needed;
- To identify what policies, procedures or laws need to be changed or introduced.¹⁵

2. Victim Surveys

Police report data alone will not suffice for the assessment: data from 52 countries show reporting rates by victims to be 30-40 per cent overall, with reporting rates for crimes such as sexual assault to be as low as 10 per cent. The lowest reporting rates are found in the least developed nations. Victimization surveys are the best way to determine its incidence and prevalence, but they are costly to do properly and keep updated. Moreover, they are unlikely to fully capture certain crimes such as spouse assault, child abuse, elder abuse and abuse of power, which are crimes that often go unreported. For such crimes, the “dark figure” of unknown victimizations will remain large.¹⁶ Nonetheless, it is crucial to conduct victimization surveys of these special groups so that the victim assistance response is appropriate in size and character. These surveys may also overlook the effect of sudden, isolated cases of mass violence, such as terrorist attacks, massacres or hijackings. Having obtained the best possible estimates of victimization, the next step will be to determine accurately the financial, medical, psychological and other costs of victimization to the victims. Developed countries have various data systems that help in determining levels of victimization (at least for individuals). However,

¹⁵ <https://www.ojp.gov/ncjrs/virtual-library/abstracts/victim-compensation-economic-legal-and-political-aspects> last visited on 18.04.2022.

¹⁶ Ibid.

research suggests that even these data systems capture only a fraction of the full costs of crime to its victims. Therefore, any estimates of shortfall are likely to underestimate the level of victim needs in comparison to the assistance available, unless the costs to victims are fully taken into account.¹⁷

3. Service Delivery

Victim services should ideally be prepared to assist all victims. However, on the basis of resources, the expertise of the programme staff, existing institutions and an analysis of the needs of a jurisdiction, programmes are urged to prioritize the implementation of services and to phase in a full service for victims over a period of time. In setting priorities, programmes are encouraged to use a systematic approach to take into account the severity of the victimizing event and its impact on the victim. Outreach programmes should be developed for victims who require increased attention in a specific jurisdiction. Support services should be available during work hours daily. However, a more comprehensive programme should have all services available 24 hours a day, where this is appropriate and feasible. Such services should be provided by telephone, through on scene response, home visits or walk-in services. Often the bulk of programmes are established in the large population centres; thus, outlying villages and towns are overlooked. Service providers must be mindful to serve all those in need, no matter how inconvenient. In order to serve victims who do not immediately contact a service provider, who are not immediately referred to services or who do not belong to the programme's priority victim population, several methods for contacting victims are suggested. Crisis counsellors trained in screening protocols could screen police reports twice weekly, to the extent possible, in compliance with laws on privacy. Police officers, following suitable training, could review the reports and select cases for referral. The programme could encourage police personnel, medical professionals, teachers, religious leaders and/or social service agencies to advise victims that the programme exists and ask if they object to being referred to the programme for further assistance. If there is no objection, the referral could then be made. Whatever method is used, victims should be contacted as soon as possible to be informed of the availability of services.¹⁸

¹⁷ Suresh v. State of Haryana, SCC Online 952 (Supreme Court 2014).

¹⁸ Gaur, K. D. (2015). *Criminal Law and Criminology* (3rd ed.). New Delhi: Universal Law Pub. Co.

Conclusion

Victim compensation is now an important side of giving justice to the victims. Beside the traditional punishment system reparation to victim has reduced the accused leaning approach in justice system but in the case of India despite some emergent developments in this direction, there are multiple defects and problem in this area for that coordinated effort from all the organization is required in the justice system. After the synchronized work efforts, lucidity and liability in every part of criminal justice system is another important need to make the successful implementation of pre-existing provisions possible. Administrative mechanisms must be strengthened to provide redress through procedures that are 'expeditious, fair, inexpensive and accessible', something which the existing system does not completely cater to at present. To reiterate the words of the apex court, no compensation can be adequate nor can it be of any respite for the victim but as the state has failed in protecting such serious violation of a victim's fundamental right, the state is duty bound to provide compensation, which may help in the victim's rehabilitation. The humiliation or the reputation that is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace.