



VICTIM COMPENSATION SCHEME: A STEP TOWARDS PROVIDING JUSTICE TO THE VICTIMS

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Abstract

More than four decades back, J. Krishna Iyer spoke that it is the weakness of our jurisprudence that victims of crime and the distress of their dependents of the victim do not attract the attention of law. In fact, the victim compensation is still the vanishing point of our criminal law. Besides only punishing the criminal, our criminal justice system should do something to secure the position of victim in the society. Hence, victim is a forgotten party to the criminal justice system. Awarding monetary compensation cannot bring back the loss victim has suffered in society. Part III of the Constitution which consists of fundamental rights and Part IV which deals with Directive Principles of State Policy, form the bulwark for a new social order in which social and economic justice would blossom.

Keywords: - *Victim, Compensation, Offender.*

Introduction

An adversarial system like ours, criminal justice system has somewhere lacked in providing justice to the victims. Victim's state is always forgotten or compromised with his rights as far as justice is concerned. When a crime is committed, the offender is tried, apprehended or punished or even released on probation in certain situations, although found guilty in court. But the victims remain victims. Besides only punishing the criminal, our criminal justice system should do something to secure the position of victim in the society. Hence, victim is a forgotten party to the criminal justice system. Awarding monetary compensation cannot bring



back the loss victim has suffered in the society. More than four decades back, J. Krishna Iyer spoke that it is the weakness of our jurisprudence that victims of crime and the distress of their dependents of the victim do not attract the attention of law. In fact, the victim compensation is still the vanishing point of our criminal law. This is the deficiency in the system, which must be rectified by the legislature.¹

In *Balasaheb Ranganath Khade v the state of Maharashtra*,² the court observed that the criminal justice system has been designed with the state at the center stage. Law and order is the prime duty of the state. It fosters peace and prosperity. The rule of law is to prevail for a welfare state to prosper. The citizens in a welfare state are expected to have their basic human rights. These rights are often violated. The law and order are breached.

Who is Victim?

There is no definition of victim as such provided in any act before. Within the Indian legal framework, the term victim is defined under Section 2(wa) of crpc, 1973 a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heir.³

Chandrachud C.J observed⁴ that article 21 guarantees the Right to life and personal liberty will be denuded of its significant content if the power of this court were limited in passing the orders of relief. Violation of right can be prevented with mandate of article 21 secured itself in providing monetary compensation.

Jurisprudence related to victomology has been widely debated across the parameters of society. The Compensation has been awarded in pubic law remedy under article 21(1). The jurisprudence under article 21 has gained traction since beginning. In *Rudal shah v state of Bihar*⁵ it was held that for custodial death the writ court can award compensation. Till date there is no precise law on victims but it is the need of hour. There are provisions in other laws

¹<http://www.legalserviceindia.com/legal/article-332-victim-compensation-scheme-an-aspect-of-modern-criminology.html>. Last visited on 12 January, 2023.

² 27 April, 2012

³ CrPC (Amendment) Act, 2008 (Act No. 5 of 2009).

⁴ *Rudal shah v state of bihar*, 1983

⁵ (1983) 4 SCC 141



for providing compensation to the victims. Krishna Iyer J. in *Rattan Singh v State of Punjab*⁶ lamented, the victim reparation is still vanishing point of our criminal law. This is the deficiency in the system, which must be rectified by the legislature.

For victims of crime, compensation remains elusive⁷

Various reasons have been propounded which effects the victims of crime.

1. Funds remain unutilized – According to V.P Sarathi of Coimbatore Human Rights Forum, there is sheer lack of awareness among law officials such as police about the scheme. The law forcing agency needs to be sensitized to the scheme and scope. In *Hussainara khaton & Ors v Home secretary*⁸, state of Bihar held recognized victimization due to abuse of state power.
2. No gender biased – According to Mr. Karunanidhi, S.357 (A) of CrPC assures compensation without any gender bias. “*Men who are victims of crime can also seek compensation under the scheme in eligible circumstances*”.

Factors determining compensation

1. Criminal Procedure Code – The 41st report of the Law commission of India was submitted in 1969.⁹ This discusses S.545 of CrPC of 1898 extensively. The report stated that the significance of recovering compensation should be enforceable in a civil court to provide remedy. However, the Law commission debated against the demarcation since the discretion to apply the provisions in cases was used scarcely by the courts in directing compensation for victims. On the basis of recommendations made by law commission, government of India introduced another bill of revising S.545 and re-introducing it in the form of s.357 as it reads today. In the statement of objects and reasons it stated in that S.357 was “intended to provide relief to the poorer sections of the community, whereas the amendment made in CrPC empowered the court to order payment of compensation by the accused to the victims of crimes to a larger extent than the previous one.

⁶ 1980 AIR 84, 1980 SCR (1) 846

⁷ <https://www.thehindu.com/news/cities/Coimbatore/for-victims-of-crime-compensation-remains-elusive/article28692575.ece>. Last visited on 09 January, 2023.

⁸ 1979 AIR 1369, 1979 SCR (3) 532

⁹ http://docs.manupatra.in/newsline/articles/Upload/6F5E12E52A5649A9BF1BCBE1DF4F8726.2F_criminal.pdf



The power to award compensation is not ancillary to other sentence, but it is in addition thereto.¹⁰ S. 358 provides for compensation to anyone who would be a victim of an arrest without any reason. Similarly Section 359 deals with instances where a complaint for a non-cognizable offences is made to a court, and the accused is convicted by the court. It provides that court can pass the payment of costs in such situations. In addition to the penalty imposed, the court may also order the accused to pay to the complainant, either in whole or in part, the cost which is incurred by the complainant in the prosecution.

2. Victim compensation and interplay with Fundamental Rights - The 154th Law Commission Report on the Code of Criminal Procedure⁹ devoted an entire chapter to “Victimology” in which the growing emphasis on victim's rights in criminal trials was discussed extensively.¹¹ The report traced the foundation of the principles of victimology to Indian constitutional jurisprudence. Part III of the Constitution which consists of fundamental rights and Part IV which deals with Directive Principles of State Policy, form the bulwark for “a new social order in which social and economic justice would blossom in the national life of the country”¹². Further it also mandates inter alia that the State shall make effective provisions for “securing the right to public assistance in cases of disablement and in other cases of undeserved want”¹³.
3. Role of government - The theory of State responsibility pins the blame of crime on the State as having failed to protect the public against crime. It propounds that compensation is therefore a consequence of such failure¹⁴. The central government also set up the Central Victim Compensation Fund Scheme [hereinafter: CVCF] vide the notification dated 14th October, 2015 by the Ministry of Home Affairs.¹⁵
4. Issues regarding implementation - There are several problems that plague the implementation of the law as envisioned under Section 357A. This is primarily because of

¹⁰ Balraj v State, 1995

¹¹ 154th Law Commission Report (1996), <http://lawcommissionofindia.nic.in/101/Report154Vol1.pdf>

¹² Art.38, Constitution of India

¹³ Art. 41, Constitution of India

¹⁴ Goldberg, Equality and Government Action, (1964), 39 NYU L REV p.205-224

¹⁵ Central Victim Compensation Scheme Guidelines, Ministry of Home Affairs, 2015, http://mha.nic.in/sites/upload_files/mha/files/CVCFGuidelines_141015.pdf



the allocation of responsibility between the state government for legislation, the DLSA and other instrumentalities for implementation.

The hon'ble Supreme Court of India recorded quoted principles of Restitution, Compensation and satisfaction in *State of Gujarat v High court of Gujarat*¹⁶.

5. Special laws - Motor vehicle act, 1988, compensation under Human rights commission and compensation under probation of offender act, 1958 are some of special laws which provides for compensation to the victims. Hon'ble Supreme court in *Manjuri Bera v Oriental Insurance company*¹⁷, the court held that the father or the brothers of the deceased party would be eligible to claim compensation under S.140 of the Motor vehicle act, 1988.

S. 3, 4 and 5 of Probation of offender act, 1958 basically enumerates the compensation concept to be provided to the victim.

Conclusion

One of the major challenges faced by us in preventing victimization and protecting victims that no specialized law relating to victomology. Abuse of power is another method of victimizing people, in order to control the abuse power. Gladstone's saying "justice delayed is justice denied" is not easy to understand because defining the meaning of delay is very subjective and without any clarification¹⁸. However, reviewing other sides of coin, it shall be noted that there have been several loopholes and drawbacks. Victomology should be presented under the human rights of criminal jurisprudence. Moreover, under public law remedy, the court recognized the shift from retribution to restitution, and compensation may be payable by the state. Crime against humanity involves not only a willing offender but often collaboration by government authorities as well. We need to examine victims' perceptions of justice in order to obtain a better understanding of how to restore justice for victims following crimes against humanity. Administrative mechanisms must be strengthened to provide redress through procedures that are expeditious, fair, inexpensive, and accessible,

¹⁶ (1998) 7 SCC 392.

¹⁷ <https://www.latestlaws.com/articles/all-about-law-relating-to-motor-accident-claims-andthe-compensation/#:~:text=To%20recover%20the%20damage%20under,file%20the%20petition%20demanding%20compensation.&text=The%20extent%20of%20compensation%20due,a%20fixed%20sum%20of%20Rs.>

¹⁸ <https://blog.ipleaders.in/victimology/>



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something which the existing system does not completely cater to at the present.¹⁹ The humiliation, pain or reputation that is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace. As responsible citizens, we must constantly remind the consciousness of justice that it owes a sacrosanct obligation towards the rehabilitation of a victim.

¹⁹ <http://www.sascv.org/ijcjs/pdfs/DubeVol13Issue2IJCJS.pdf>