

COMPENSATORY JURISPRUDENCE **UNDER CRIMINAL LAW: AN ANALYSIS**

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Abstract

Whenever an offence is happening it has two players involved one the offender and other the Victim. Though from the ancient time the crime or the offences kept taking places, but the centrifugal point has always been the Offender. From the ancient time punishing the offender has always been paramount to that effect that five theories for punishing the offender evolved from a subsequent time to show the society that repeating the same would have same consequent on the person doing the same. Later reformatory theory came where reforming the offender same in the picture. Eventually even when today crime takes place the first statement within us comes “Punish the offender” but there is hardly any buzz for the victim. The portentous thing is that more than the offender it’s the Victim who suffers and in the course of time victim becomes the offender and the offender becomes the victim. The victim Compensation is the administration's method for monetarily helping casualties and survivors of wrongdoing, yet the present framework is underused and some of the time abused. Notwithstanding physical mischief, casualties and survivors may endure sincerely and fiscally. Victim expenses can incorporate therapeutic and psychological well-being advising costs and the expenses of settling or supplanting harmed or demolished property. the victim who can't work because of physical or mental weakness loses wage. Victim's remuneration has dependably been the sobbing poor person at the entryway of criminal equity. Although, it is a deep-rooted idea its improvement on more logical lines and furthermore as a branch of criminology has started since a couple of decades back. A few nations have taken up the diverse plans of installment of pay to their casualties of wrongdoing.

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Introduction

Victim's compensation has always been the weeping beggar at the door of criminal justice. Although, it is an age-old concept but its development on more scientific lines and also as branch of criminology has begun since a few decades ago. Several countries have taken up the different schemes of payment of compensation to their victims of crime. In India as well, there are different statutory provisions in criminal justice under which the compensation can be awarded to the victim of crime, viz. Fatal Accident Act, 1855, Probation of Offenders Act, 1958 and Code of Criminal Procedure, 1973.

Few decades ago, the criminologists/sociologists acknowledged the importance of compensation and its benefits for the victims of crime. In pursuance of the recommendations of Law Commission¹, a provision for the compensation to the victims of crime has been provided in Sec.357 of Cr. P. C. According to the sub s. (1) and sub s. (3) of s. 357, "The court may award compensation to the victims of crime at the time of passing of judgment, if it considers appropriate in a particular case in the interest of justice". In 2008, the Government introduced major amendments to the CrPC, in order to strengthen India's criminal justice system. The amendment for the first time tried to define the term "victim" and restore the outdated laws related to provision of compensation to victims.

Research Methodology: -

For the completion of this research work, primary as well as secondary sources of information have been utilized to collect data. The other sources of information shall include standard reference books, law reporters (AIR, SCC, Cri.LJ, RCR (Cri.)), Committee and commission reports and journals. The method of research used in the proposed study is analytical, comparative, and in nature. The present study also considers, the report of Law Commission of India and various other committees

Historical Background: -

Towards the finish of the medieval times, anyway the organization of pay started to lose its power, because of the concurrent development of Royal and Ecclesiastical control which had a sharp qualification amongst torts and wrongdoings. The idea of remuneration was firmly identified with that of discipline and it was converged to a few degrees in the Penal Law, yet in the meantime, various offenses like murder, theft and assault were never again viewed as

¹ 41st Report, Law Commission of India on Indian Penal Code, 1860 (1969)

torts which could be settled by remuneration, however were viewed as violations against society and were culpable as such. Progressively, as the State cornered the organizations of discipline, the privileges of the harmed were isolated from the Penal Law and the commitments to pay harms or remuneration turned into a piece of the Civil Procedure.²

The interest for pay for the casualties of wrongdoings was modified amid the Corrective changes development of the nineteenth Century. It was talked about at fifth International Jail Congress in the later 50% of the century. Regardless of the solid promotion of Jermy Bentham and various driving Penologists, the acknowledgment of the standards of the state obligation to pay remuneration for the casualties of wrongdoing stayed as far off as ever. Among numerous different recommendations One was that open Tribunals, while passing sentences in regard of offenses prepondering Civil component viz. in Petty Larceny, break of trust and cheating and so forth ought to be enabled to urge dissolvable guilty parties to make money related compensations to the casualties. Another proposal was that if the guilty parties were wiped out they ought to be made to work for the State till they earned enough to remunerate their casualties.³

Pre-Independence: British Period

India was governed by the British up to 1947 in which year we accomplished in reliance. In England the idea of State risk for the demonstrations of the workers what's more, authorities are impacted by the teaching of 'Ruler can't be blamed under any circumstance'. The East India Organization (alluded as EIC) started its vocation in India as a business company yet in course of time because of recorded reasons it obtained sovereign forces and it is as it were in the wake of increasing such power a refinement is drawn amongst sovereign and non-sovereign capacities which it worked out. On account of Bank of Bengal v. Joined Company,⁴ the Supreme Court (at Calcutta) dismissed the supplication of sovereign resistance in an issue including the recuperation of enthusiasm by the Bank of Bengal due on the promissory notes from the EIC for the arraignment of War.

Post Independence Period

² Kishore K., "The History of Compensation of the Victims of Crime" 27, Cr.LJ (2006)

³ Ibid

⁴ (1831) 1 BR 87

The primary case after autonomy including the convoluted risk of State was, *State of Rajasthan v. Vidyawati*⁵ in which the Supreme Court of India kept up that the State is vicariously subject for the torts conferred by its authorities.

Hardly any decades back, the criminologists/sociologists recognized the significance of remuneration and its advantages for the casualties of wrongdoing. In compatibility of the suggestions of Law Commission of 41st Report (1969), a far-reaching arrangement for the pay to the casualties of wrongdoing has been given in Sec.357 of Cr. P. C. As per the sub s. (1) and sub s. (3) of s. 357, "The court may grant pay to the casualties of wrongdoing at the season of going of judgment, in the event that it thinks about proper in a specific case in light of a legitimate concern for equity". In 2008, the Government acquainted significant revisions with the CrPC, keeping in mind the end goal to fortify India's criminal equity framework. The change out of the blue made an endeavour to characterize the expression "casualty" and re-establish the obsolete laws identified with the arrangement of remuneration to casualties. Lamentably it by and by leaves the arrangement of pay to the sole circumspection of the judge's something that has been infrequently practiced voluntarily in the past-the vanishing point of Indian casualty remuneration law.

Constitutional Framework

The Constitutional provisions as to Fundamental Rights especially Article 14 and 21 could be widely interpreted so as to include rights of the victims of crime including right to compensation. Similarly, the constitutional remedies⁶ for human rights violations, is extensively applicable to the victims of crime. There are provisions in part IV of the constitution in Directive principles of state Policy⁷ which could be liberally construed to cover victims of crime entitling them the right to compensation. Art 38(1) provides that state shall strive to promote welfare of the people by securing and protecting as effectively as it may a social order in which social, economic and political shall inform all institutions of national life. This provision if interpreted creatively is inclusive of victims' rights. Similarly, Art 39 which provides for policies to be followed by the state to secure economic justice and Art 40 which provide for equal justice is inclusive of victims' rights to compensation. Article 41 inter

⁵AIR 1962 SC 933

⁶ Art 32 and Art 226 of the Constitution of India. In fact, honourable Supreme Court has in several cases granted compensation to the victims for human rights violations under public law remedy

⁷ Art 38(1) of the Constitution of India which provides that state shall strive to promote welfare of the people by securing and protecting as effectively as it may a social order in which social, economic and political shall inform all institutions of national life

alia states that state shall make effective provisions for “securing public assistance in the “cases of disablement” and in the “case of undeserved want”. The expressions disablement and other cases of undeserved want could be surely interpreted to include victims of crime and hence is state is obliged to provide public assistance to victims by way of monetary compensation apart from guaranteeing other rights to them⁸. These directives though non-justiciable, imposes obligation on the state to take positive action for the welfare of the people. Moreover, many of the Directives are elevated to the status of Fundamental Rights by judicial decisions⁹. Apart from these, as per Art 51-A of the constitution it is the Fundamental duty of every citizen of India, “... to have compassion for living creatures” and “to develop humanism”. These provisions also could be creatively interpreted as to include victims of crime.¹⁰

Compensatory Jurisprudence Evolved By The Supreme Court

The Supreme Court of India has played the most commendable role in evolving compensatory jurisprudence for the victims. Some of the landmark cases in which the Supreme Court provided compensation to the victim include *Chairman, Railway Board and Others v. Mrs. Chandrima Das*¹¹, in which the Supreme Court ordered compensation to the rape victim, who was a Bangladeshi national, by the government for the rape committed in the *Yatri Niwas* managed by the Indian Railways at Howrah Station. Then again, in *NilabatiBehara v. State of Orissa*¹², the Court ordered compensation for custodial killing of the victim by the police in the State of Orissa. In both the cases, the Court held that victims’ fundamental rights under Article 21 of the Constitution of India, 1950 were violated. In *Rudal Shah v. State of Bihar*¹³, the Supreme Court made it categorically clear that the higher judiciary has the power to award compensation for violation of fundamental rights through the exercise of writ jurisdiction and evolved the principle of compensatory justice in the annals of human rights jurisprudence. Thus, the role of the Supreme Court in this direction is laudable. The only thing required is the assistance of the legislature in the form of comprehensive law on victims’ compensation and rehabilitation and executive assistance in

⁸ See also of Victims and the Criminal Justice System in India: Need for a Paradigm Shift in the Justice System by Murugesan SRINIVASAN*Jane EYRE MATHEW www.doiserbia.nb.rs/ft.aspx?id=1450-66370702051S visited on 28-02-2015

⁹ For instance, see *Unnikrishnan v. State of Andhra Pradesh* (1993) 1 SCC 645- right to education; *Randhir Singh v. Union of India* AIR 1982 SC 879 etc.

¹⁰ DPSP, Constitution of India

¹¹ (2000) 2 S.C.C.465.

¹² (1993) 2 S.C.C.746

¹³ (1983) 3 S.C.C.508

the form of better implementation of the law.

Victim- The Forgotten Side: -

The term 'Victim' means a person who has been victimized by another person against whom legal action may be taken for compensation and allied relief. Victim in relation to criminal justice administration means victims of rape, victims of murder, victims of cheating, victims of criminal breach of trust etc. i.e. victims of crime only¹⁴. In 2008, an amendment in Cr. P.C. s.2(wa)¹⁵ defines that "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 heir.

The victim is essentially an inseparable part of crime. Therefore, the phenomenon of crime cannot be comprehensively explained without incorporating the victim of crime. Many believe that the victim is the most disregarded participant in criminal justice proceedings¹⁶. It is therefore, the Indian higher courts have started to award the compensation through their writ jurisdiction in appropriate cases¹⁷. However, it is the shortcoming of our present jurisprudence that somewhere it provides the accused almost all the facilities like right to fair trial, bail, legal aid etc., but the victim is devoid of any respite in socio-economic terms. Time to time courts have directed the State authorities to provide all necessary facilities and ensure that human rights of criminals are not violated¹⁸. And the victims of crime are entirely overlooked in misplaced sympathy for the criminal. The guilty man is lodged, fed, clothed and entertained in a model cell at the expense of the State¹⁹. The victim instead of being looked after is contributing towards the care of prisoners during his stay in the prison. KrishanaIyer, J. in *Rattan Singh v. State of Punjab*²⁰, aptly highlighting the apathy of law to a victim of crime, observed: "It is a weakness of our jurisprudence that victims of crime and

¹⁴ Das, D. P. "Secondary Victimization" 205, Cr.L.J, July (2008)

¹⁵ Inserted by The Code of Criminal Procedure (Amendment) Act, 2008, Received the assent of the President on 7th January, 2009, Act Published in the Gazette Of India 9-1-2009, Part II Schedule 1 Extraordinarily P.1 (No.6).

¹⁶ Kadish, S. H. Encyclopaedia of Crime and Justice 1611, vol. IV, The Free Press, New York (1983)

¹⁷ See *Rudal Shah v. State of Bihar*, AIR 1983, *Bhim Singh v. State of Jammu & Kashmir*, AIR 1986 SC 494; *Nilabati Bahera v. State of Orissa*, (1993) 2 SCC 716; *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy & Ors.*, AIR 2012 SC 100

¹⁸ *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610. This decision is also followed in *Dalbir Singh v. State of U.P.*, SC 2009 (2) AICLR 143; Court on its own motion v. *State of Punjab*, 2008 (2) RCR (Cr) 790; *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy & Ors.*, Ibid

¹⁹ Some of the rights of an accused that have been recognized and guaranteed by the Constitution are: right to equality and equal protection of laws; right against ex post facto operation of law; protection against double-jeopardy; protection against self-incrimination; right to have freedom from unwanted arrest and matters incidental thereto; right to legal defence; right to have public hearing and speedy trial; right relating to pre-trial detention and matters incidental thereto; and right to approach higher judicial authority by way of appeal, etc.

²⁰ 1979 (4) SCC 719

the distress of the dependents of the victim do not attract the attention of law. In fact, the victim reparation is still the vanishing point of our criminal law. This is the deficiency in the system, which must be rectified by the legislation.”

Justification For Compensation To Victims

Victim compensation is a novel idea and if successfully meted out it retains the equity between the injured and the injurer. Victim's ego gets satisfied and he feels sense of belongingness and security in the society. The modern world has almost discouraged the reimbursement to the victim by offender or his family because the state sponsored punishment supplanted victim and family reparations. The restitution has replaced by punishment²¹. As justice should not only be done but it must be seen to have been done, therefore according to punishment to the offender or violator of the rights be it may legal rights, fundamental rights or human rights, of an individual is just the former part of justice i.e. the justice has been done by punishing the culprit. But the later part that it must be seen to have been done still requires something more to be done. It requires just not only punishment to the accused but caring for the victim and protection of his rights and supporting him in times of distress. The possible justification can be the following: -

1. To set example for the criminal;
2. For deterring the criminal from repeating the same act;
3. Partly of reforming the criminal by eradicating the evil will; and
4. Partly of satisfying society's feeling of vengeance which the act is supposed to evoke.

Apart from it, India became signatory to various international covenants and conventions with regard to the human rights which also warrant the state to take care of the human rights and other rights mentioned therein which are primarily indispensable so far as the human being is concerned.²²

Need Of Restorative Theory

Restorative Justice as the name suggest, Justice done to restore the status, condition and situation of an individual. Thus, “Restorative justice is a theory of justice that emphasizes repairing the harm caused by criminal behavior. It is best accomplished when the parties themselves meet cooperatively to decide how to do this. This can lead to transformation of

²¹ Rai, H.S. “Compensation Jurisprudence and Victims of Crime” 334, Cr.L.J, (2004).

²² *Ibid*

people, relationships and communities.”²³ The aim of Restorative Justice is to make the offenders aware of the harm caused by the crime, their responsibility to repair the harm caused and provide relief to the victims. Restorative Justice provides the active participation of the offender, the victim and the affected party to sit face to face and respond to the crime. The parties involved not only addresses physical and material injuries caused by the crime but also psychological, emotional and social injuries as well. Restorative Justice Council: “Restorative processes bring those harmed by crime or conflict, and those responsible for the harm, into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward.”²⁴ Restorative Justice is a process where the offender and the victim discuss the harm caused by the crime and through negotiation and dialogue solves the problem. The victim always has questions in mind related to crime which only the offender can give; Restorative Justice provides an opportunity to the victim to get all his answer.

Conclusion

Every crime depicts the failure on the obligation of the state to respect, protect and fulfil the human rights of its subjects. Hence, brief review of the existing legal framework in the area of providing compensation to victims very little has been done either through statutes or by schemes to address the series of problems faced by the victims because of crimes. Therefore, it is desirable that the structures of criminal justice as well as their theoretical bases should reflect the interests of individual victims as well as the broader interests of the state. It is not to be forgotten that if the victim chooses not to cooperative with the criminal justice system, the whole system will collapse. It is now mandatory that court should determine in every criminal case the necessity as to awarding compensation. The criminal Procedure (Amendment) act, 2008 which incorporated Sec 357A²⁵ providing for victim compensation fund is a giant leap in this regard. The recent contribution of apex court in implementing this provision is also appreciable and that presently it has become obligatory on the part of court to provide interim compensation in deserving cases. It is not necessary that conviction of the offender must be recorded. Though Supreme Court has taken initiative to make the judicial members to be aware of this scheme, it is also necessary that common men also must be made aware of this provision. Legal awareness camps must be held in this regard. It is also

²³ Restorative justice briefing paper, pg1

²⁴ Restorative justice action plan for the criminal justice system, ministry of justice, pg4

²⁵ Code of Criminal Procedure,1973

important that wider publicity must be given in the media as to the availability of this scheme.

It is now high time for the legislature to rise to the occasion and enact a comprehensive legislation on victims' rights in criminal justice so that victim feel that society care for him and that he is no longer a forgotten party in the criminal justice administration.

Suggestions

1. A new penal of Advocates should be made to give legal assistance to victims. This penal should be regulated as per the guidelines issued by the Apex Court
2. A comprehensive legislation at the central level is required for victim compensation and rehabilitation which will be obligatory for the state government to follow. The proposed legislation should be a comprehensive one, and should deal with all the aspects of victim compensation and rehabilitation. A Victim Compensation Authority has to be established under the new Act.
3. If the fine amount appears inadequate for victim rehabilitation, the gap must be bridged by state assistance for the rehabilitation of the victim. This approach will reduce unnecessary financial burden on the state.
4. NGOs and other civil society should take the charge and promote awareness regarding the interest of victims. Police should be trained regarding the victim assistance program. The training should enable the police to understand the medical, psychological, legal and financial needs of the victims.