

RIGHTS OF CRIME VICTIMS FOR COMPENSATION

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ABSTRACT

The provision of compensation which is being frequently used by courts of different countries and which is considered as new modern phenomena, is not correct but awarding compensation to victims had a long history. It was a compensation which distinguishes the civil law and criminal law. While the object of civil law is based on the principle of payment of compensation for private wrongs, as a remedy which is pursued through the apparatus setup by the state for that purpose, the system of criminal law functions on the principle of punishing the persons whose behaviour is morally culpable. In other words, the very goal of the civil law system is to provide compensation for private wrongs but whereas the system of criminal law aims at punishing the persons whose behaviour is morally capable. It means that purpose of civil is compensation and the purpose of criminal justice is punishing the wrongdoer. Now this very difference between civil and criminal law has been diluted and compensation is being awarded as a matter of right not in criminal law but also in constitutional law, environmental law and for violation of human rights etc.

INTRODUCTION

The evolution of this concept can be traced both historically and theoretically. There is evidence to indicate that certain categories of the victims of crime were compensated in the older times either by the offender or his kinsmen, or by the sovereign. In earlier law, an injured person or the relatives of one killed could exactly take similar blood feud from the wrong order of his kin. Later it was accepted that Blood-Money could be paid in lieu of pursuing the Blood-Feud. (Blood money means money penalty paid by a murderer to the relative of his victim.) Early legal system, commonly move from allowing blood feud to allowing and then requiring payment of blood money, and commonly specify in some detail in the amounts payable for causing the death of a injuries to victims of various degrees. Through the injured person or the relative was allowed by law the option of taking money or

taking blood, and certain offence, for example treason were ‘botless’ or irredeemable and were punishable by death or mutilation & forfeiture of the offender’s property to the king the money value set on a man according to his rank.

COMPENSATION TO VICTIMS

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 crime. The right to compensation has also been interpreted as 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. Unbelieving the judgment, Chandrachud C.J. observed (RudulSah v. State of Bihar, 1983): Art 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of relief from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Art 21 secured is to mullet its violators in the payment of monetary compensation¹.

People’s Union for Democratic Rights v. State of Bihar, 1987)

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). 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

¹ “95% offenders accused of child rape know their victims”, Indian Express, June 11, 2017, New Delhi p.7.

compensation out of fine or even without sentence of fine), s. 358 (compensation up to Rs.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 ora sentence (including a sentence of death) of which fine forms a part, in its discretion, interlaid, 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 noting cases of acquittal .Under section 357 (3) CrPC. 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 (Balraj v. State, 1995). There is also no limit to the amount that may be awarded and is left entirely to the discretion of the court to decide in each case depending on the facts and circumstances of the case. In Rohitash case (Rohtash @ Pappu v. State of Haryana, 2008), the court raised an apt question, “Should justice to the victims depend only on the punishment of the guilty? Should the victims have to wait to get justice till such time that the handicaps in the system which result in large scale acquittals of guilty, are removed?..”. Responding that the need to address ‘cry of victims of crime’ is paramount and separate from the issue of punishment of the offender, the court held that, The victims have right to get justice, to remedy the harm suffered as a result of crime. This right is different from and independent of the right to retribution, responsibility of which has been assumed by the state in a society governed by Rule of Law. But if the state fails in discharging this responsibility, the state must still provide a mechanism to ensure that the victim's right to be compensated for his injury is not ignored or defeated (Dr. Jacob George v. State of Kerala, 1994).²

In spite of this, there has been a general reluctance on the part of courts to exercise the power under Section 357 to the benefit of the victims (Hari Krishnan and State of Haryana. Sukhbir Singh, 1988). Somehow, the courts have limited themselves to award of sentences with no mention of adequate compensation, thereby denying victims the basic right. More than three decades back, Humble Mr. Justice Krishna Iyer stated that while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of

² Grubbing, D., Sexual Offending: A cross-culture comparison, Annual Review of Sex Research, 3(1993), pp. 201-217.

the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty and Victimology must find fulfilment not through barbarity but by compulsory recoupment by the wrongdoer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn (*Maru Ram v. Union of India*, 1981). Even the apex court in 2014 reiterated, it appears to us that the provision confers a duty on the courts to apply its mind to the question of awarding compensation in every criminal case. ...the power toward compensation was intended to reassure the victim that he or she is not forgotten in the criminal justice system.

STATUTORY SCHEME FOR COMPENSATION

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 based on the specific recommendations of the court, in addition to the compensation payable under s. 357 Cr.P.C., (1973). Section 357B Cr.P.C., (1973) specifically provides that in cases of acid attack (s. 326 A 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. Pursuant to this legislative amendment, the states notified the scheme, though after an initial reluctance and prodding by the courts (*Suresh v. State of Haryana*, 2014). Till date, almost all states and union territories have set up the scheme to provide for payment of compensation and other reliefs to the victims and/or their dependants.³

³ Stephens, Criminal Law, in *Encyclopedia of Crime and Justice*, 9th ed., 1991 Vol.4, p.1356.

ANALYSIS OF VICTIM COMPENSATION SCHEME

In this article, an analysis has been made of VCS in about 12 states and 1 union territory of India. For the analysis, the VCS as notified by each of the individual states have been taken and thoroughly studied. Each scheme has been analyzed on the basis of the individual parameters and compared with the other states. Thereupon, an understanding has been sought to be achieved on the scope and efficacy of the scheme. These states represent all four corners of the country. Each of the states have taken their own time to notify the scheme for victims. While Arunachal Pradesh (Arunachal Pradesh Victim Compensation Scheme, 2011), Bihar (The Bihar Victim Compensation Scheme, 2011), Chhattisgarh (Victim Compensation Scheme, Chhattisgarh, 2011), Karnataka (Karnataka Victim Compensation Scheme, 2011) and Delhi (Delhi Victims Compensation Scheme, 2011) have been states who were first to notify the VCS in 2011, few states like Uttar Pradesh (Uttar Pradesh Victim Compensation Scheme, 2014) and Madhya Pradesh (Madhya Pradesh Crime Victim Compensation Scheme, 2015) notified the same only in 2014 and 2015 while other states enacted the scheme in 2012 (Assam Victim Compensation Scheme, 2012; Goa Victim Compensation Scheme, 2012

Himachal Pradesh (Victim of crime) Compensation Scheme, 2012; Victim Compensation Scheme, 2012) and 2013 (Gujarat Victim Compensation Scheme, 2013; Tamil Nadu Victim Compensation Scheme, 2013), almost three to four years after amendment in Cr.P.C., (1973).

ELIGIBILITY CRITERIA FOR COMPENSATION

The scheme has laid down the eligibility for award of compensation. The basic condition for grant of compensation is that the victim must have suffered loss or injury causing 'substantial' loss to the income of the family making it difficult to make both ends meet or has to spend beyond his means on medical treatment of mental or physical injury. Arunachal Pradesh, Assam, Chhattisgarh, Goa and Odisha lay down this condition. The word 'substantial' indicates 'considerable' or 'extensive'. Therefore, only in cases where the victim finds it extremely difficult to meet the expenses arising from the crime is he entitled to compensation, in other cases, he is not. Odisha, however, holds that where such loss makes it difficult to live 'as before without the financial aid or has affected his/her dignity or personality', the victim shall be entitled to compensation, thereby enhancing the standards from mere sustenance to a life of dignity (cl. 7(b) Odisha Victim Compensation Scheme, 2012). It may be stated herein that Madhya Pradesh has further clarified that in case

the annual income of victim from all sources exceeds 5 lakh (half million), the amount payable will be 50% only of the award stipulated by the authority Madhya Pradesh Crime Victim Compensation.

Additionally, certain conditions are common for most states, Arunachal Pradesh, Assam, Madhya Pradesh, Goa, Bihar, Tamil Nadu, Karnataka, Uttar Pradesh, including the victim should not have received compensation in relation to the crime from any other Scheme of the Central or State Government or insurance company; compensation given by the court is inadequate; cooperation of the victim with police and prosecution during Trial. Karnataka stipulates a time period of forty- eight hours for reporting the crime as a Condition precedent to grant of compensation (cl. 6(2) Karnataka Victim Compensation Scheme, 2011). This precondition may prove to be a serious constraint for victims, where Due to threat, coercion, duress etc., they are unable to report the crime or unable to assist The investigation or trial⁴.

PROCEDURE FOR GRANT OF COMPENSATION

The procedure in all states has been kept simple to help the victims. Thus, where a commutation is received from the court or an application is made by the victim, thuds/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 Arunachal Pradesh Victim. 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.

CRITERIA FOR COMPENSATION

As such, no rule or guideline has been laid down for determining the amount of compensation. An upper limit has been set by the states for each offence and the amount must not exceed that amount. In general, the losses caused to the victim, the medical expenses incurred and the minimum sustenance amount required for rehabilitation, are the determining factors before the DLSA/SLSA. In this, the authority may seek the assistance of a medical

⁴ Lorence Clark, & Debra Lewis, "Women, Property and Rape", Susan Caffrey, & Gray Mundy (ed.), "The Sociology of Crime and Deviance: Selected Issues", Greenwich University Press, UK, p. 152.

board (in case of Arunachal Pradesh) or police officer (in case of Odhisha) or probation officer (in case of Madhya Pradesh). Delhi has laid down certain factors to be considered while awarding compensation Delhi Victims Compensation Scheme, 2011). These include:

- Gravity of the offence
- Severity of mental/physical harm or injury suffered by the victim
- Expenditure incurred on medical treatment, mental health, funeral, travelling
- Loss of educational opportunity
- Loss of employment
- Relationship of offender & victim
- Whether the crime was one isolated incident or series of incidents
- Whether victim pregnant or contracted STD/HIV or disabled as a result of the offence
- Financial condition of victim so as to determine the need for rehabilitation.
- In case of death, age, income, number of dependents etc. of deceased.
- Any other factor which may be considered just or sufficient by DLSA/SLSA Even Uttar Pradesh has provided similar factors which should guide the authority in grant of compensation and rehabilitation services, which include the type and severity of bodily injury and expenditure incurred on medical treatment and psychological counselling, age and financial condition of the affected person, non-pecuniary loss entailing suffering, mental or emotional trauma or humiliation faced and lastly, expenses towards alternate accommodation Uttar Pradesh Victim Compensation Scheme, 2014). Interestingly, Assam has made reference to the Motor Vehicles Act, 1988 in the matter of compensation stating that in fixing the quantum of compensation, regard must be had to ‘scientific, transparent and reasonable bases and not left to the whims and prejudices of the authorities.’ Assam Victim Compensation. Some states have made provision for additional assistance in view of the vulnerabilities and special needs of persons Uttar Pradesh Victim Compensation Scheme, 2014). Thus, in case of minor girls Gujarat Victim Compensation Scheme, 2016) and mentally challenged persons, the DLSA may consider the need for specialized treatment and care and make provision for grant of additional amount, not exceeding Rs. 1 lakh (US)⁵.

Interim/Immediate Relief

All states, except Delhi, have provision for grant of interim relief to the victims of crimes. Generally, such relief includes medical support and/or first aid facility as well as any other

⁵ Eakramuddin, ‘A Critical Study of Rape Victim..... in their Rehabilitation and Protection in India’. in International Journal ‘Researcher’ 2014, 6(6), pp. 54-59.

relief that may be required in the situation, thereby including financial assistances well. For victims of acid attack, some states, Gujarat and Tamil Nadu, have specifically provided for grant of Rs. 1 lakh (US \$1561) as immediate financial assistance within 15 days of the reporting of the crime (cl. 6(1) Gujarat Victim Compensation Scheme, 2016 Tamil Nadu Victim Compensation Scheme, 2013). However, for the grant of interim relief, a certificate from the officer in charge of the police station or magistrate is necessary which may prove to be daunting for the victim.

CONCLUSION

There has been a paradigm shift in the approach of criminal justice system towards victims of crime in India. In line with the basic principles enumerated in the 1985 Declaration, restitution and compensation to victims have become predominant features. However, compensation to victims, out of fines imposed, have been used sparingly and the amounts paid have been minimal (Sarkar, 2010). To fill the gap, VCS is a bold attempt by the states to compensate the losses or injuries suffered by the victims as well as meet the needs for rehabilitation. However, the schemes across the states have been seen to be divergent on many aspects. Even the amount paid as compensation varies across states. It is important that the scheme should operate for the benefit of the victim and therefore, all plausible efforts must be made to facilitate the process. The DLSA/SLSA must be empathetic to the pain and agony of victims of crimes and their consequent necessities and difficulties. Accordingly, orders must be made to provide the best deal to the victim, whereby he/she is able to rehabilitate, re-assimilate and resocialize for a dignified living. Simplicity of procedures must be emphasized upon and imposition of burden on victims to secure certificates, provide documents etc. should be reduced, so far as possible. Interim relief to victims must be provided, especially in cases of gang rape, acid attacks, etc., without the least emphasis on formalities and technical procedures. The pendency of applications should be addressed since VCS largely works on the foundation of speedy relief to victims. Lastly, the amount set by the states must be in tune with the prevailing costs of living, medical treatment, psychological assistance enumerated in the Declaration, appropriate measures to 'minimize inconvenience to victims', 'avoiding unnecessary delay in disposition of cases...granting awards to victims' as well as 'proper assistance to victims' must be fundamental to the entire process⁶.

⁶ "That Somali's cry will be heard", The Hindustan Times: August 25, 1994, New Delhi, p.7.

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