

Victim Compensation Scheme- Shortcomings & Recommendations

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*I am no longer a victim.
I have always hated that word !
I am now a survivor.
The road from one to the other
was a long journey,
which has no end, only new beginnings.
A victim lives in fear
A survivor endures.
A victim is weak and powerless,
Paying for what was not her doing
A survivor has grown strong
Because she knows the price is not hers to pay
The sin is not hers to atone.
God will extract the price from the right person
On the day when no lie can be told.
So do not call me a Victim.
I have always hated that word.*

Introduction :

The compensation to victims of a crime is a matter of concern, throughout the world. The condition of the victims of crime is no better and for a quite long time, the victim was not the concern for traditional criminology. The purpose of compensation is straight forward, compensation serves to right what would otherwise count as wrongful injuries to person or their property. More than four decades ago **Krishna Iyer, J.** highlighted the continued apathy of the Criminal Justice System:

“It is the weakness of our jurisprudence that victims of crime and the distress of the dependents of the victim do not attract the attention of law. In fact, victim reparation is still the vanishing point of our criminal law.

* Judicial Magistrate, Hardwar

The Criminal Justice System in India would ensure efficacious and expeditious justice once the law recognizes the right of victims and adequately provides for the compensation of victims. Reforms towards a restorative criminal justice system hinged on the amendments made to the Criminal Procedure Code of 1973 in 2009. These amendments were undertaken by the government in order to reform India's archaic criminal laws. The major thrust of the victim related amendments was on defining 'victim' and recasting existing defunct laws related to the provision of compensation to the sole discretion of the Judge; something that has been rarely exercised of their own accord in the past.

The prime focus of the article would be victim compensation law and its interface with criminal justice and outlining the recently amended law that deals with victim compensation and shortcomings of the same.

Evolution of concept of compensation to victim

In the pre-independence period, the criminal justice system remained largely pre-occupied with the crime control oriented policy that viewed criminal justice in terms of a state monopoly with a narrow focus of justice, confined to the State and the accused. However, in the pre-independence period it expanded beyond the reformation and rehabilitation of the offender to acknowledge the plight and concerns of the victims.

The right of compensation to the victim was finally crystallized on 29 Nov. 1985 at its 96th plenary session. The General Assembly of the United Nations, adopted the U.N Declaration of Basic Principles of Justice for victims of crime and abuse of power. This brought the dawn of a new era by emphasizing the need to set norms and minimum standards in international law for the protection of victims of crime. The U.N. declaration recognized four major components of the rights of victims of crime i.e-

1. Access to justice and fair treatment;
2. Restitution;
3. Compensation;
4. Assistance;

Indian Position

The present criminal justice system is based on the assumption that the claims of victim of crimes are sufficiently satisfied by the conviction of

perpetrator. The Committee on reforms of criminal justice system, chaired by Justice Dr. V. S. Malimath, by the Ministry of Home Affairs, in its report submitted to the Government of India in March 2003 perceived that “Justice to victims” is one of the fundamental imperatives of criminal law in India. It suggests a holistic justice system for the victims by allowing, among other things, participation in criminal proceedings as also compensation for any loss or injury.

In India there are five possible statutory provisions under which compensation may be awarded to victims of crime namely:

- Fatal Accidents Act, 1855
- Motor Vehicles Act, 1988
- Criminal Procedure Code, 1973
- Probation of Offenders Act, 1958; and
- Constitutional remedies for human rights violation

A .Position Prior to the Amendment

A careful glance at the Cr. P.C. 1973, reveals a highly fragmented legislative scheme for compensating victims. In pursuance of the recommendation of the law commission in its Forty-First Report (1969), a provision was made for the victims of crime that has been provided in section 357 of the Cr. P.C.

Although the principles underlying section 357 is similar to that envisaged in the U.N. Basic Principles of justice for victims of crime, its application is limited to where-

- (1) The accused is convicted and
- (2) The compensation is recovered in the form of a fine. When it forms a part of the sentence or a Magistrate may order any amount to be paid to compensate for any loss or injury by reason of the act for which the accused has been sentenced and
- (3) In awarding the compensation, the capacity of the accused has to be taken into account by the Magistrate practically, given the low rates of conviction in criminal cases, the long drawn out proceedings and the relatively low capacity of the average accused to pay, one needs to question whether an effective victim compensation scheme exists.

B. Position Post Amendment

To address the absence of a definition of a victim, sub section (Wa) has been inserted in section 2 of the amended Cr. P.C. (via Criminal Amendment Act, 2009) as below:-

“ 2 (Wa) '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.”

Given the propensity of a narrow interpretation of “loss or injury” suffered by the victim we believe that an expansive delineation of what constitutes loss or injury should be added by the legislature. This will also check the varied interpretations made and ensure uniformity in the dispensation of compensation. Explicit inclusion of compensation to victims of criminal abuse of power should also have been made. Additionally, there is a need to include persons who have suffered harm while intervening to assist victims in distress or to prevent victimization. It is important that along with victims, the police personnels are also entitled to compensation. Thus, these provisions encourage both the police and people at large, to curb crime.

C. Analysis of Section 357-A

Under the amended Indian law, sub section (1) of section 357 A CrPC the preparation of a scheme to provide funds for the compensation of victims or his dependents who have suffered loss or injury as a result of a crime and who require rehabilitation.

Sub-section (2) of sec. 357-A Cr.P.C. states that whenever the court makes a recommendation for compensation to the District or State legal service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the above mentioned scheme. It is significant that the legal service Authority, comprising of technical experts, has been entrusted the task of deciding the quantum of compensation , since they are better equipped to calculate the loss suffered by a victim. However, the provision lose its teeth because the discretion remains with the judge to refer the case to the Legal Services Authority. The problem is compounded by the fact that traditionally, Indian judges have been hesitant to invoke this provision.

It is a positive development that in sub-section (3) of Sec. 357-A CrPC, the trial Court has been empowered to make recommendation for compensation in cases where-

- either the quantum of compensation fixed by Legal service Authority is found to be inadequate; or
- where the case ends in acquittal or discharge and the victim has to be rehabilitated.

However, there is scope to further extend compensation to victims in those cases that end in acquittal or discharge beyond rehabilitation to compensation for loss.

Sub- section (4) of sec. 357-A Cr. P.C. states that even where no trial takes place and the offender is not traced or identified but the victim is known, the victim or his dependents can apply to the State or District Legal Services Authority for award of compensation. We see a shift towards State funded victim compensation as has been established in the United Kingdom and the United State. This is an extremely progressive development that takes into account practical reality of an overburdened criminal justice system, which is unable to identify all offenders and prosecute them.

Sub-Section (5) of Sec. 357-A Cr. P.C. says that on receipt of the application, the State or District Legal Services Authority shall after due enquiry award adequate compensation by completing the enquiry within two month. It is pertinent that a time frame of two months would ensure speedy delivery of justice to the victim and specification of a time period would create accountability and prevent dilatory measures.

Further sub-section (6) of Sec. 357-A Cr. P.C, states that in order to alleviate the suffering of the victim, the State or District Legal Service Authority may order immediate first-aid facility or medical benefits to be made available free of cost or any other interim relief as the appropriate authority deems fit. It is a positive step that the section speaks of "alleviating the suffering" of the victim and seeks to help the victim recover in the aftermath of the crime and ensure that the victim does not have to wait till the end of the trial to recover these costs. The statutory recognition of the right to interim relief is an important step and an urgent need of the hour.

Shortcomings and Recommendations regarding victim compensation scheme

The policy of our criminal justice system is victim oriented and we have, to a certain extent, incorporated the idea of compensatory criminal jurisprudence. The problem arises in implementation of this policy. The provisions being discretionary, it neither imposes a legal obligation on the judge to order compensation in all suitable cases to the victim of crime nor does it require reasons to be recorded for not doing so. Similarly, these provisions do not vest in the victims a legal right to be compensated either by the accused or the state for loss or injury caused by the commission of the offence. The victim remains at the mercy of the discretion of the judge for the award of compensation, this being the vanishing point of victim compensation in India. Here punishment to the accused though it may exhaust the primary function of criminal law, is not fulfillment of the Rule of Law.

Even though almost a period of 7 years have expired since the enactment of sec. 357-A CrPC, the award of compensation has not become a rule and interim compensation which is very important, is not being granted by the Courts. It has also been pointed out that the upper limit of compensation fixed by some of the States is arbitrarily low and is not in keeping with the objective of the legislation.

It is imperative to convert the discretionary power of the court into a legal mandate requiring it to, in all suitable cases, pass compensation orders and when it decides not to do so, make it obligatory to record reasons for not doing so.

The court should be liberal in utilizing the discretion vested in them in granting compensation to the injured in a criminal case even in cases where the claim of compensation ordinarily lies in the domain of the civil court. Victim should be spared the time and expense of bringing civil suits, claiming compensation: as well as the emotional strain of enduring a second trial.

Interim compensation ought to be paid at the earliest so that immediate need of victim can be met for determining the amount of interim compensation. The court may have regard to the facts and circumstances of individual cases including the nature of offence, loss suffered and the requirement of the victim. The establishment, strengthening and expansion of national funds for compensation to victim should be encouraged.

To effectuate any progressive victim compensation reforms, there is a need for a sensitized judiciary that recognizes the importance of victim compensation. Though, justice has been meted out to the victim through judicial creativity at the appellate level, these instances are few and far between.

In the recent ruling of *Suresh and another vs. State of Haryana (2015) 2 SCC 227*, the Hon'ble Apex Court held that the courts below appear to have remained oblivious to the provisions of Sec. 357 CrPC. It is paradox that victim of a road accident gets compensation under no fault theory but the victim of crime does not get any compensation, except in some cases where the accused is held guilty which does not happen in a large Percentage of cases.

The Apex Court in this case recommended to all courts to exercise this power liberally so as to meet the ends of justice in a better way. It is imperative to indicate the investigating agency as well as trial judges about the need to provide access to justice to victims of crime. National Judicial Academy should impart requisite training to all judicial officers in the country to make the provision operative and meaningful.

CONCLUSION

Unlike western countries, the victims of crime in India do not have a statutory right to be compensated. There is no compulsion on the Court to record reasons for not invoking its power to provide compensation. Ultimately, the efficacy of the law and its social utility depends largely on the manner and the extent of its application by the courts. A good law badly administered may fail in its social purpose and if overlooked in practice, will fail in purpose and utility. Section 357-A Cr.P.C. has a social purpose to serve and has to be applied in appropriate case.

It would not only be unjust from the point of view of victims of crimes but it would also result in the negation of the Rule of Law. **D. P. Wadhwa, J.** of the Supreme Court of India reminded us that in our efforts to look after and protect human rights of a convict, we should not forget a crime victim.

It is believed that compensation will at least provide some solace to the victim, even if his lost honour cannot be fully recompensed.

The victim compensation law as it stands after the 2009 Amendment to the Cr. P.C. is more holistic in its approach of addressing the plight of

victims. However, the infrequency with which these provisions are invoked by judges in a bid to achieve victim justice and to alleviate the suffering of the victim would render these provisions redundant and be the vanishing point of Indian victim compensation.

At last, I would like to quote the powerful poem narrated by Amitabh Bachchan in the movie “ Pink”, which encourages women to stand up for themselves and assert their personality without having to fear judgment. It inspires confidence among women and inspires them to grow. It also encourages women to use the chains that held her back as an ornament. These lines are-

*Tu khud ki khoj mein nikal
Tu kisliye hatash hai
Tu chal, tere wajood ki
Samay ko bhi talash hai..... samay ko bhi talash hai
Jo tujhse lipti bediyan..... samajhna inko vastra tu
Ye bediyan pighal ke..... Bana le inko shastra
tu..... Bana le inko shastra tu
Charitra jab pavitra hai.....toh kyun hai ye dashta teri
Ye papiyon ko hak nahi..... ki lein pariksha teri.....
ki lein pariksha teri
Jala ke bhasm kar use jo krurta ka jal hai
Tu aarti lau nahi tu krodh ki mashal hai
Tu krodh ki mashal hai..
Chunar ko udaa dhwaj bana gagan bhi kap-kapayega
Agar teri chunar giri..... Toh ek bhukamp aayega.....
ek bhukamp aayega
Tu khud ki khoj main nikal
Tu kisliye hatash hai
Tu chal, tere wajood ki
Samay ko bhi talash hai..... samay ko bhi talash hai.*
