
VICTIM EMANCIPATION WITH REFERENCE TO SECTION 357 OF CRPC

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RESEARCH PROBLEM

“Law should not sit limply, while those who defy it go free and those who seek its protection lose hope.”

The carriage of justice is often misconceived to halt at the signature on a judgment, however, the true destination lies at the lap of the victim. The framework of justice in India has been largely oblivious to what would constitute true vindication to the victim. The ambit of justice has fixated to merely mean the conviction of the accused. There is a lack of infrastructure within the Indian judicial system to support or accommodate development in the process. This, in turn, affects the quality of justice offered to the victim. Justice, hence, must be reformative for the purpose of the perpetrator and rehabilitative for the survivor. The victim must be given rehabilitative support including monetary compensation. It also remains that victim of a crime, including her/his kith and kin carry a legitimate expectation that the State will ‘catch and punish’ the guilty and compensate the aggrieved. Even in the event of the failure of the machinery of justice in identifying the accused or if it falls short in collecting and presenting requisite evidence to ensure appropriate sentencing of the guilty, the duty of compensation remains. The development of victim centric jurisprudence must transcend legislative necessity and afford participating instruments flexibility to respond to the diverse needs of a victim. Compensation must be actualized in the sense of realizing rehabilitation for the victim.

RESEARCH QUESTION

- Whether the Indian Judicial System has specific laws for the compensation of victims?
- Whether the Criminal Procedure Code, 1973, has provisions for the compensation of victims?
- What has been the judicial response to the plight of victims of crime?

RESEARCH METHODOLOGY

The Researcher has depended on the secondary sources of data collection which would be analyzing

research papers, books, articles and reports, cases, policies and other documents presented by the Government of India and abroad. The doctrinal method of research is followed.

INTRODUCTION

Crime often entails substantive harm to people and not merely symbolic harm to the social order. The agony and anguish of the victim of the crime cannot be perceived. It also cannot be envisaged that in the criminal trial, the victim is to be forgotten or kept in oblivion. Consequently, the needs and rights of victims of crime should receive priority attention in response to crime. One recognized method of protection of victim is compensation to victims of crime. The needs of victims and their family members are varied and extensive. Rehabilitation of the prisoner need not be by closing the eyes towards the suffering of the victims of the offence.

A glimpse at the field of victimology reveals two types of victims. The primary type consists of direct victims, i.e., those who are alive and are suffering on account of damage and harm inflicted by the prisoner while committing the crime. The secondary type comprises of indirect victims, i.e. those who are dependent of the direct victim of crime and who undergo suffering due to deprivation of their bread winner.¹

The United Nation General Assembly (UNGA) in 1985 adopted a "Declaration of the Basic Principles of Justice for the Victims of Crime and Abuse of Power".² The Declaration gives a comprehensive definition of a victim:

"Victims includes: Any person who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or emissions that are in violations of criminal laws, including those laws prescribing criminal abuse of power."

Under this definition, we can assume that both natural and legal persons, individuals and collective groups and the families and dependents of injured parties would also constitute victims.

In recent years, the phenomenon of "victim rights" has been catapulted to the forefront of policymaking on both, the domestic and international platforms. While the criminal justice system has traditionally been conceptualized as a mechanism for the State to resolve its grievances against suspects, defendants and offenders, it is now broadly accepted that justice cannot be administered effectively without the

¹ *State of Gujarat v. Hon'ble High Court of Gujarat, (1998) 7 SCC 392.*

² *UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power : resolution / adopted by the General Assembly 29 November 1985, A/RES/40/34, available at <https://www.refworld.org/docid/3b00f2275b.html> (accessed 05 July 2023).*

due recognition of the rights and interests of other parties affected by the criminal action. This shift has affected the extent to which their interests are represented in the formulation of criminal justice policy, and an increasing number of initiatives have been undertaken in the name of victims, seeking to bolster their position within the system.

With the growth of Indian centralized legal system, however, restitution was gradually phased out, government took over and crimes were seen as an act against the State. The State assumed the role of the prosecutor, and it was the State that divided what punishment the offender should undergo and in a sense in return for taking upon itself the major task of dealing with the criminal offences, the State stood to gain from any penalties inflicted upon offenders which might carry out with them monetary rewards, the fine payment to the State, and took over from restitution. In the process of transfer from personalized system to an impersonal State run system, the victim was virtually forgotten by the system.

During the formative stages of penal code, voices were raised in favour of introduction of the system of reparation to the victims of crime. It was argued that in a country like India where the majority of people are poor and unable to sustain the ordinary expenses incidentally to their daily substance, this right should be carried to the utmost limit.³

VICTIM COMPENSATION AND THE LAW IN INDIA

No compensation can be adequate nor can it be of any respite for the victim but as the State has failed in protecting such a serious violation of the victim's fundamental right, the State is duty bound to provide compensation which may facilitate in the victim's rehabilitation. Krishna Iyer J., speaking for the court in *Maru Ram & Ors. v. Union of India and Ors.*,⁴ in his inimitable style said that while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercised, the length of prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty. Victimology must find fulfilment, said the court, 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. Justice requires that a person who has suffered (including dependents) must be compensated. The accused is responsible for the reparation of any harm caused to him and the victim of the crime committed or his kith and kin have an expectation that the State will punish the guilty and will compensate the victim.

There are five possible statutes under which compensation may be awarded to victims of crime. They are: Fatal Accident Act, 1855; Motor Vehicles Act, 1988; Criminal Procedure Code, 1973;

³ *Second Report on the Indian Penal Code, at 495 (1847).*

⁴ *Maru Ram & Ors. v. Union of India and Ors., 1980 AIR 2147.*

Constitutional remedies for human right violations; Probation of offenders Act, 1958.

Right of access to justice under Article 39A of the Constitution of India and principle of fair trial mandates the right to legal aid to the victim of crime. It also mandates protection to witnesses, counselling and medical aid to the victims of the bereaved family and in appropriate cases, rehabilitation measures including monetary compensation. Justice remains incomplete without adequate compensation to the victim.

COMPENSATION UNDER THE CRIMINAL PROCEDURE CODE, 1973

Section 357 of the Criminal Procedure Code, 1973, empowers the court to award compensation to victims of the offence in respect of loss/injury suffered. The object of the Section is to meet the ends of justice in a better way. This Section was enacted to reassure the victim that he/she is not forgotten in the criminal justice system. Under Section 357 of CrPC, a criminal court is empowered to impose a sentence of fine or a sentence (including sentence of death) of which 'fine' forms a part at its discretion. Sub-Section (1) of Section 357 empowers a criminal court to appropriate the whole or any portion of the fine recovered for the purpose mentioned in its clauses (a) to (d). Clauses (a) and (d), in essence, deal with defraying expenses and pecuniary losses incurred by a person in prosecution and by a bonafide purchaser of stolen goods, that has become the subject of theft, criminal misappropriation, criminal breach of trust, cheating, or receiving or retaining or the disposing of stolen property, and which is ordered to be restored to its rightful owner, respectively. Clause (b) and (c) on the other hand, respectively deal with recompensing any loss (pecuniary or otherwise) or injury caused by any offence by death. Sub-Section (3) of Section 357 recognizes the principle of compensating the victims even when no sentence of fine is imposed. The amendments to the CrPC brought about in 2008 focused heavily on the rights of victims in a criminal trial particularly in trials relating to sexual offences. Though the 2008 amendments left Section 357 unchanged, they introduced Section 357A and paved a new path to compensate the victim on order of discharge or acquittal as well as in the case where the offender is not traced. Under this provision, even if the accused is not tried, however, the victim must be rehabilitated, and the victim may request the State or District Legal Services Authority to award him/her compensation.

The UN declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 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 UN declaration recognized four major components of the rights of victims of crime namely, access to justice and fair treatment, restitution, compensation, and assistance. The declaration was implemented by introducing Section 357A in the Code of Criminal Procedure.

JUDICIAL RESPONSE TO THE PLIGHT OF VICTIMS

The Courts in India have, of late, evolved the practice of awarding compensatory remedies not only in terms of money but also in terms of other appropriate reliefs and remedies. The decisions in *Nilabati Behera v. State of Orissa*⁵ and in *Chairman, Railway Board v. Chandrima Das*⁶ are illustrative of this new trend of using constitutional jurisdiction to meet out justice to victims of crime. But the law contained in Section 357(3) CrPC has, by and large, been mostly neglected. Hence, the Apex court in *Hari Singh v. Sukhbir Singh and Ors.*,⁷ had to issue a mild reprimand while exhorting the courts for liberal use for this provision to meet the ends of justice as a measure of responding appropriately to the crime, and reconciling the victim with the offender. The amount of compensation, observed this Court, was to be ascertained by the Courts relying upon the facts and circumstances of every case, the nature of the crime, the justness of the claim and also the capacity of the accused to pay.

The power of the Courts to award compensation to victims under Section 357 is not subsidiary to other sentences but are in addition thereto, and that imposition of fine and/or grant of compensation to a great extent should rely upon the relevant factors aside from such fine or compensation being just and reasonable.⁸ The amount of compensation sought to be thus imposed, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of accused to pay the same must also be judged.⁹ The concept behind directing the accused to pay compensation to the complainant is to give him immediate relief so that it alleviates his grievance. In terms of Section 357 (3), compensation is awarded for the loss of inquiry suffered by the person due to the act of the accused for which he is sentenced. If merely an order, directory compensation is passed, it would be totally ineffective. It might be an order without any deterrence or apprehension of immediate adverse consequences in case of its non-observance. Therefore, position of separate sentence would secure the very object of payment of compensation.

In the case of *Ankush Shivaji Gaikwad v. State of Maharashtra*,¹⁰ the Supreme Court again noted with despair that Section 357 of CrPC has been consistently neglected by the Courts despite series of pronouncements to that effect. In this decision, the Supreme Court highlighted that, though the award or refusal under the provision is well within the judicial discretion, yet there exists a mandatory duty

⁵ *Nilabati Behera v. State of Orissa*, 1993 AIR 1960.

⁶ *Chairman, Railway Board v. Chandrima Das*, AIR 2000 SC 988

⁷ *Hari Singh v. Sukhbir Singh and Ors.*, 1988 AIR 2127.

⁸ *Sarwan Singh and others v. State of Punjab*, 1978 AIR 1525; *Balraj v. State of U.P.*, 1995 AIR 1935; *Baldev Singh and Anr. v. State of Punjab*, 1996 AIR 372.

⁹ *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and Anr.*, (2007) 6 SCC 528.

¹⁰ *Ankush Shivaji Gaikwad v. State of Maharashtra*, AIR 2013 SC 2454.

on the court to apply its mind to question of compensation, in every criminal case, as a standard practice.

Injustice to victims in terms of reparation would create a constitutional vacuum in legal system.

Although, retribution is a primary function of law, reparation is the ultimate goal of the law.

CONCLUSION

Victim compensation, as a concept in India is still nascent and shy to continuous development. While the courts no longer subscribe to the archaic approach of limiting victim support to monetary penalty imposed on the convict, there is much momentum to be gained so as to adequately assist victims from various backgrounds. The penal law of India provides for payment of compensation to victims of crime. Legislature and the judiciary have taken the steps gradually to evolve the necessary principles by which compensation could be paid to victims of crime.

With the development of the concept of welfare state it is now being increasingly felt by criminologists, social thinkers and jurists that the administration of criminal justice should be such as would enable the victim to get his redress more expeditiously and adequately within the criminal justice system itself rather than through a long winding civil litigation against the individual offender. Moreover, the State having failed to give protection to its citizens, ought not to shy away from its responsibility to rehabilitate the victim by making adequate compensation for the loss suffered especially when the offender is unidentified or is so indigent that nothing substantial can be recovered from him by way of reparation. Hence, it could be concluded that some rights have been granted to victims in criminal justice system but still much more are required to give them a fair and respectable status.