

# Revisiting Victim Compensation in India

Manjinder Kaur<sup>1</sup>, Dr. Arti<sup>2</sup>

<sup>1</sup>Desh Bhagat University, Mandi Gobindgarh, Punjab, India

<sup>2</sup>Assistant Professor, Desh Bhagat University, Mandi Gobindgarh Punjab, India

**Abstract:** *A colossal number of casualties are impacted by wrongdoing. Individuals endure hurt whether it be physical or social or it be financial they ought to be given admittance to equity. In the new many years it has been seen that effect of wrongdoing on casualties has removed their consideration of criminal regulations purview and the end that has come out that casualties ought to be treated with compassion and there fundamental privileges should be secured. In the present time understanding the point of view of casualties is arising as another part of criminal science otherwise called Victimology. The compensation to the victim of crime is big matter of concern; all over the world the condition of the victims of crime is not better. The function of compensation is simple, i.e. it serves to right of the victim what would else count as unlawful injuries to persons or their property. It has been stated under different provision of the Code of Criminal Procedure, The Probation of Offenders Act, 1958 and Motor Vehicle Act, 1988. In this paper the focus is given on understanding the perspective of victims, need for victim compensation, Indian provisions and statutes and the judicial trend related to the victim compensation.*

**Keywords:** Basic Rights, Compensation, Empathy, Perspective, Victimology

## 1. Introduction

The carriage of equity is frequently confounded to end at the mark on a judgment; notwithstanding, the genuine objective lies at the lap of the person in question. While the courts save the holiness of equity, it is the right of the State to help the mainstays of equity. Victimology related law has discussed broadly on where to put the chunk of liability - whether the obligation of the State closes simply by enrolling a case, directing examination, starting indictment and condemning a denounced or whether separated from seeking after these means, the State has a further liability to the person in question. Essentially, there is a difficulty whether the court bears a legitimate obligation to grant remuneration regardless of conviction. Nonetheless, it stays that casualties of a wrongdoing, including her/his friends and relatives convey a genuine assumption that the State will 'get and rebuff' the liable and remunerate the distressed. Indeed, even in the occasion when the apparatus of equity neglects to distinguish the charged or misses the mark in gathering and introducing imperative proof to guarantee fitting condemning of the blameworthy, the obligation of remuneration remains.

The structure of equity in India has been generally careless in regards to what might be valid justification to the person in question. The ambit of equity has focused to only mean the conviction of the charged.

This has pardoned foundational disappointments with regards to messy examination, unfortunate endeavors of the arraignment, and problematic trustworthiness of the people who are associated with the cycle. Further, there is an absence of foundation to help or oblige improvement simultaneously. This thus influences the nature of equity proposed to the person in question.

Justice must be reformative for the purpose of the perpetrator and rehabilitative for the survivor. Therefore, it is a legitimate expectation that the victim must be given rehabilitative support including monetary compensation.

Such compensation has been directed to be paid in public law remedy with reference to Article 21.<sup>1</sup> The Hon'ble Supreme Court has in numerous cases, to do justice to the victims, directed payment of monetary compensation as well as rehabilitative settlement where State or other authorities failed to protect the life, dignity and liberty of victims.<sup>2</sup>

The jurisprudence under Article 21 has gained momentum since the turn of the century and now extends to rehabilitating the victim or her/his family. However, the scope for remedy to the victim in terms of compensation was earlier limited under public law by way of writ jurisdiction. Therefore, there was a need to introduce a specific provision for providing compensation to the victim irrespective of the result of criminal prosecution. Accordingly, Section 357-A was introduced in the Code of Criminal Procedure, 1973.<sup>3</sup>

A huge number of victims are affected by crime. People suffer harm whether it be physical or social or it be monetary they should be given access to justice. In the recent decades it has been noticed that impact of crime on victims has withdrawn their attention of criminal laws jurisdiction and the conclusion that has come out that victims should be treated with empathy and there basic rights must be protected. In today's time understanding the perspective of victims is emerging as a new branch of criminology also known as Victimology.

### Victim Compensation

The compensation to the victim of crime is big matter of concern, all over the world the condition of the victims of crime is not better. For quite a long time the victims were

<sup>1</sup> The Constitution of India, 1950, <https://www.india.gov.in/my-government/constitution-india/constitutionindia-full-text>. [hereinafter "Constitution"].

<sup>2</sup> KewalPati v State of U.P (1995) 3 SCC 600; Supreme Court Legal Aid Committee v State of Bihar (1991) 3 SCC 482; Railway Board v Chandrima Das (2000) 2 SCC 465; NilabatiBehera v State of Orissa (1993) 2 SCC 746; Khatri (1) v State of Bihar (1981)1 SCC 623.

<sup>3</sup> Code of Criminal Procedure Act, 1973 [hereinafter "CrPC"]

not the major Concern for criminology. The function of compensation is simple. Compensation serves to right of the victim what would else count as unlawful injuries to persons or their property.<sup>4</sup>

The advancement of victim compensation played a major issue in the victim support movement. Part of the dilemma in opinion might be traced to the fact that a lot has been written through these years about arrangement and function of victim compensation. Victim compensation is a form of victim support in meeting physical emotional and society related need of the victim. An has played a crucial role in victim recovery. Not much attention is given on the role of victim compensation in future victim support efforts.<sup>5</sup>

### Victim Compensation: Definition, Nature & Scope

In today's era the Victimology is not only limited about studying penal relation. But compensation to victim is also gaining importance. Any person who has suffered damage he or his dependants are entitled to get compensation. In the medieval era criminal or his kin used to give compensation for any wrongful act. If the accused is not in the capacity to pay the compensation, then the state is duty bound to pay the compensation.

“**Ubi jus ibi remedium**” is a principle in the law of torts which says that states that there is no wrong without a remedy and the rule of law demands that one should not be disturbed by wrongdoing.

Compensation is a mandatory measure in tort law and the principles governing the compensation and determination of damages are very well acknowledged in the tort law.

The term “**Compensation**” in the current scenario means repayment for the loss suffered. Anything that is given to make things equal is called compensation, a thing that is given to make reparation for the loss, repay, recompense or pay. It can be seen as a liability of the society which is of civil. Compensation, is different from damages is used for any unlawful act, which cause the damage or loss to any person. The meaning of compensation is the money is given for compensating any damage or loss. The main objective behind the compensation is to make the loss bearable to the victim either the person has suffered financial loss or not. The crux of providing compensation is to provide some sort of help to the victim who has suffered the damage either it be physical, psychological or emotional and supports the victim to recover from the trauma as soon as possible and works as a helping hand.

### Necessity of victim compensation:

The Hon'ble Supreme Court stated the importance of victim compensation in *Maru Ram v.*

Union of India

<sup>4</sup> Robert E. Goodin, Theories of Compensation, *Oxford Journal of Legal Studies*, Vol.9, 1989, p.56.

<sup>5</sup> Marlene A. Young, The Role of Victim Compensation in Rebuilding Victims' Lives, p.1.

“ ... A victim of crime cannot be a ‘forgotten man’ in the criminal justice system. He is the one who suffered the most. His family is devastated, especially in terms of death and physical injuries. This is in addition to factors such as loss of honor and humiliation. An honor that is lost or a life lost cannot be regained but then the currency compensation will at least give some comfort. ”

### Object of Compensation

When a victim gets compensation for any crime he has suffered it becomes very important to the person because it symbolizes justice towards the victim and it can be seen as a financial help for the victim.

In the society when compensation is awarded it shows that there is something wrong that is done by the victim. The compensation would work as a step towards helping the victim to overcome the trauma and the damages that is suffered by the victim at individual level.

The compensation helps victims in transforming their lives.

### Funds to Provide Compensation to the Victims

Compensation can be provided by both offender as well as the state as the case may be. In some state there are programs which are state administered in cases of violent crimes. In some cases it is not necessary that the offender is caught or known in those cases it is helpful if there is a state funded program to give compensation to the victims. basically state programs are biased informal than any other civil proceeding. There may be different sources from which the victim compensation funding can be done these sources are confiscated property, fines, tax revenues and other funding of the state or any private institution.

### Claim for victim compensation can be made on different bases but it is not only limited to:

- 1) Pain and suffering due to physical or mental violence;
- 2) Medical cost;
- 3) Unpaid or low paid wages;
- 4) Fines/imposed by criminals for bad behavior.

### Victim Compensation in Indian

Under different provision of the Code of Criminal Procedure, The Probation of Offenders Act, 1958 and Motor Vehicle Act, 1988 various provisions governing compensation has been stated.

### Compensatory Provisions under Cr.P.C.

In the Cr.P.C 1973 has authorized the courts in which criminal matters are tried in India for ordering the compensation to the person who has suffered loss or damage. Section 357 deals with compensatory provisions.

### Under Section 357(1) it is given.<sup>6</sup>

“Whenever under any law in force for the time being a criminal court puts fine... or a sentence (including a sentence to death) of which fine forms a part, the court may, when imposing judgment, order the whole or any part of the fine recovered to be applied:

<sup>6</sup> Mishra, S.N., the Code of Criminal Procedure, 1973(2008)p.484.

**In covering expenses properly incurred in the prosecution;**

In the payment to any person of reimbursement for any loss or injury caused by the offence when compensation is, in the view of the court, restorable by such person in a civil court; When any person is prosecuted of any offence for having caused the death of another person. Under the Fatal Accident Act, 1855, another person is compelled to pay compensation to a person entitled to receive compensation from a person who has been compensated for such a death".<sup>7</sup>

Under section 358 gives power to a magistrate to force or give an order to a person to pay or give compensation not more than Rs1000 to person for making police officers to arrest that person in wrong case. Likewise, section 359 of Cr.P.C directs to pay compensation in non- cognizable cases.<sup>8</sup>

**Implementation of Victim Compensation Scheme In Relation to Cr.PC.**

The victim compensation scheme which has been started by various states under the direction of the supreme court for the protection of the victims against the mental harm and dependents of the victims against the offences under sec. 357A of Cr.P.C. Further the sec 357A providing for compensation to the victims has been categorized into various parts which are as follows:-

Sec 357A(1) provides for compensation to be given to either the victim or his legal heirs who have suffered misfortunes or faced any kind of discrimination by the society should be given an opportunity to recover under the formation of victim compensation scheme as implemented by the states.

The criteria of compensation for victims which has been laid down in sec 357A (2) is based upon sub sec (1) itself. The District Legal Service Authority which referred as DALSA when ordered by any court under its judgment have the power to decide on the amount of compensation to be paid to the victim. This power has been granted to the District legal authority as expertise in understanding the nature and effect on the victim for granting the proper quantum of compensation.

After the insertion of sec 357A the District or the Trial courts are also allowed to give necessary compensation to the victims as earlier they were not authorized. Under sub sec(30) of sec 357A it has been provided that the District legal authority on the direction of the District court has the power to grant compensation under those circumstances where the victim is released or require any kind of rehabilitation to recover from the event as it might hamper in his life ahead. Also, the compensation provided by the DALSA should be sufficient enough that the individual can recover from the event.

Further the rights of the victim and the legal heir or representative has been dealt under sub sec (4) of sec 357A. These right include right of compensation for any kind of

<sup>7</sup> Under Sec.1A(b) of the Act, husband, wife, parents and children are entitled to compensation.

<sup>8</sup> Ibid.

damages suffered by the victim before the identification of culprit and before the start of the court proceedings. This sec. talks in favour of the victim as they can ask for compensation even before the start of any court proceeding from the District legal authority. This sub sec. is very important for providing quick remedy to the victim.

**Probation of Offender Act 1958**

Under section 5(1) of the probation of offender act contains provision regarding compensatory claim. As stated in this section, the court directs the release of a wrongdoer under section 3 or section 4 of the Act, if it is deemed fit, it may further direct the accused to further pay to the victim the amount, as the court deems fit and the cost of the procedure.<sup>9</sup>

**Compensation under Motor Vehicle Act 1988**

In case of death or injury in case of vehicle accident or their representatives can claim compensation from the wrongdoer under section 5 of motor vehicle act 1988. These cases can be tried under trial court.<sup>10</sup>

**Relief in the form of compensation as a changing judicial trend**

Judiciary plays a very crucial role in rectifying the claims of the compensation of the victims. There has been very important role of high courts in awarding the compensatory justice to the victim suffered from loss or damage. Some landmark judgments that ensures compensatory justice to victims and its shows the concern of judiciary in that field.

Increasing the area of awarding the compensation to the person suffered under Bihar Section 358 of Cr.P.C., in *Rudal Shah v. State of Bihar*<sup>11</sup> observed that a The person is compensated for the loss or injury caused by the crime, and this includes the deceased's wife, husband, parents and children.

The Apex Court in *Sarwan Singh v. State of Punjab*<sup>12</sup> there are several factors that should be taken into consideration before giving order of compensation to the crime victim is the court should keep in mind the ability of paying the compensatory amount by the offender , the type of offence and the amount of damage and injury suffered and should keep in mind the effect of offence on the life of victim and its family the amount of bodily, psychological and emotional lass suffered by the victim and its relatives and family member. Before awarding compensation the court should keep in mind that amount should depend on facts, logic, and the circumstance. A reasonable time period should be provided to accused to pay the compensation and the offender should be allowed to pay the compensation in installments.

As given in the case *SAHELIV*<sup>13</sup>(an organization of women activist group) the Apex Court of Delhi gave order to the Delhi Administration to pay the sum Rs. 75,000/- as

<sup>9</sup> Paranjape, N.V., Criminology & Penology with Victimology (15<sup>th</sup> ed.) *Central Law Publications*, p.680.

<sup>10</sup> Ibid.

<sup>11</sup> AIR1983 SC1086.

<sup>12</sup> AIR2000SC362.

<sup>13</sup> SAHELIV. Police Commissioner, Delhi, AIR1990 SC513

exemplary compensation to nine year old Childs mother as the boy died because of getting beaten by the police officer while extracting evidences from him.

### Recent Update

**SECTION 375(A) was added in CR.P.C through amendment act 2009 (insert by Act of 2009, sec. 28 (w.e.f. 31.12.2009)**

Section 357 (A) states that:

(1) Central government with the help of state governments should prepare a scheme for victim compensation to provide funds to the victims who have suffered death loss damage injury to restore their status of life.

This provision would work as a helping hand for victim compensation. These regulations would strengthen the provision of victim protocol given in SAARC protocol.

## 2. Suggestions & Recommendations

After making a comparative analysis, it can be seen in last decades the scenario of victim compensation has changed drastically. If we compare other countries position with India we can see that other countries are more developed to improve India's stand there are some suggestions given below-

In India there is a need of extensive legislation on victim compensation.

As the upcoming concepts in America such as statement of victim compensation which helps in increasing the contribution of victim. Such concepts are required in India to increase the involvement of victims in justice system.

#### The statement for victim impact would contain:

The bodily, psychological or emotional impact of the crime, it would cover the loss done to the family such as guardians and caretaker.

#### The need for restoration:

India should adopt other significant measures to provide compensation as a statutory right, and a special provision that mandates judges to record the reason of not providing compensation. Funds created by state for victim assistance can be taken as ready for anytime relief which can further prevent victimization. On the basis American system acts like victim of crime should be built to give assistance to "victim assistance efforts" or "state victim compensation programs" it provides subsidy etc. it is a good step that India should adopt.

## 3. Conclusion

Casualty pay is currently a significant side of giving equity to the people in question. Alongside the conventional discipline framework restitution to casualty has diminished the charged inclining approach in equity framework however on account of India in spite of a few new improvements toward this path, there are numerous deformities and issue around here for that planned exertion

from all the association is expected in the equity framework. After the synchronized work endeavors, clarity and obligation in all aspects of law enforcement framework is one more significant need to make the fruitful execution of prior arrangements conceivable.

## References

- [1] Abner J. Mikva, Victimless Justice, 71 J. Crim. L. & Criminology 189 (1980).
- [2] Andrew Karman, Crime Victims: An Introduction to Victimology (2003)
- [3] Dr.B.MShukla, Victim Compensation under the Indian Criminal Law, Gujarat Law Herald, 18(1), 1998,
- [4] Evan J. Mandery, Amy Shlosberg, Valerie West, and Bennett Callaghan, Compensation Statutes and Post exoneration Offending, 103 J. Crim. L. & Criminology 553 (2013).
- [5] Frances L. Pierson, Victim Compensation through Sentencing.
- [6] HarvemycGregor, Compensation versus Punishment in Damages Awards; Modern Law Review, 1965.
- [7] Marlene A. Young, The Role of Victim Compensation in Rebuilding Victims' Lives
- [8] Mishra, S.N., the Code of Criminal Procedure, 1973 (18th ed.) Central Law Publications
- [9] Paranjape, N.V., Criminology & Penology with Victimology (15th ed.) Central Law Publications
- [10] Prof. MehrajUddinMir, Compensatory Jurisprudence and Crime Victim:A Comparative Analysis, Vitasta law Journal, Vol. 4 No. 4, 2014.