

Legislative measures of victim's compensation

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Abstract

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. These are taken through different legislative measures.

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1. Introduction

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, 2003. In pursuance of the recommendations of Law Commission of India in its report¹ a comprehensive provision for compensation to victims of crime has been inserted in section 357 of the Code of Criminal Procedure, 2003 (herein after Cr. P.C.).

According to s. 357 subs. (1) and sub-s. (3), the court may award compensation to the victim of crime at the time of passing judgment, if it considers appropriate in a particular case in the interest of justice. These provisions make the trial courts and the appellate courts competent to award compensation to the victims of crime only after trial and conviction of the accused. These powers to award compensation are not subsidiary to other sentence, but it is in addition there to.

2 It is left to discretion of the court to decide in each case depending on its facts and circumstances. However, the existing provisions of Code are not founding encouraging one. Any compensation awarded under the cover of this Section at the end of normally protracted trial spanning over an average of 8 to 10 years is not immediately available to the victim as he must await the appellate round to conclude.

3. It is pertinent to note that the trial courts have seldom used the powers conferred on them under s. 357, Cr. P.C., liberally. The provision for payment of compensation has been in existence for a considerable period of time on the statute book in this country. Even so, criminal courts have not, it appears, taken significant note of the said provision or exercised the power vested in them there under.

The Law Commission refers to this regrettable omission in the following words: "We have a fairly comprehensive provision for payment of compensation to the injured party under section 545 of the Criminal Procedure Code. It is regrettable that our courts do not exercise their statutory powers under this section as freely as liberally as could be desired.

The section has, no doubt, its limitations. Its application depends, in the first instance, on whether the court considers a substantial fine as proper punishment for the offence. In the

most serious cases, the court may think that a heavy fine in addition to imprisonment for a long term is not justifiable, especially when the public prosecutor ignores the plight of victim of the offence and does not press for compensation on his behalf." More than three decades back Krishna Iyer J. speaking for the Court in Maru Ram & Ors. v. Union of India and Ors. 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 exercise, the length of the 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 wrong doer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn. The number of cases⁶ where s.357 has been used for awarding compensation is like salt in the flour. Courts never took it seriously. So taking note of the indifferent attitude of subordinate courts, the Apex Court in the Hari Kishan case, ⁷ directed the attention of all courts to exercise the provisions under s.357 of the Cr. P.C. liberally and to award adequate compensation to the victim, particularly when an accused is released on admonition, probation or when the parties enter into compromise. The court highlighted the importance of s. 357(3) of the Cr. P.C. in the following words: "Section 357 of Cr. P.C. is an important provision but courts have seldom invoked it.

Perhaps due to ignorance of the object of it, this Section of law empowers the court to award compensation while passing judgment of convicting. In addition to conviction, the court may order the accused to pay some amount by way of compensation to the victim, who has suffered by the action of the accused. This power to award compensation is not ancillary to other sentences but it is in addition thereto. It is a measure of responding appropriately to crime as well as reconcealing the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system."

While taking cognizance of several cases related to compensation the honourable Supreme Court observed in Ankush Shivaji Gaikwad v. State of Maharashtra that the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on

the Court to apply its mind to the question in every criminal case.

Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. In 2008, Cr. P.C. was amended and s. 357 A10 was added in which victim compensation scheme had been introduced. Still, there are number of judgements in which courts are giving no reasons for not awarding compensation and they are passing non speaking orders.

Once again in 2013, new additions namely s.357 B, s.357 C have been inserted in Cr. P.C.12 S.357 B provides the additional compensation to victims who come under s. 326 A, 376 D of the Indian Penal Code. S. 357 C gives the directions to all the hospitals whether they run by govt. or by local authorities that they provide the free medical aid to the victims of ss. 326 A, 376 A, 376 B, 376 C, 376 D of Indian Penal Code.

Besides that, compensatory jurisprudence has also emerged in the light of human rights philosophy as a dynamic interpretation of Art. 21 of the Constitution. "There are a large number of reported judgements of Supreme Court as well as High Courts which deal with the problem of compensation under Arts. 32 and 226, for breach of public law duties, negligent acts of officers of state, illegal detention, custodial death, rape, torture etc. and creating a new right by way of interpretation of the constitution in human rights approach. The courts have adopted these new measures for making the human rights as well as constitutional rights meaningful, effective and have emerged as the champion of the weak, poor and underprivileged people.

Research Study

The power of the constitutional courts is not only injunctive in ambit, but it is also remedial in scope. Our judiciary is not lagging behind in exercising extraordinary constitutional jurisdiction and open a new humanistic compensatory jurisprudence by awarding payment of compensation in appropriate cases not in all cases."

In *Rabindra Nath Ghosal v. University of Calcutta and Ors*, this Court held: "The Courts having the obligation to satisfy the social aspiration of the citizens have to apply the tool and grant compensation as damages in a public law proceeding. Consequently when the Court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights and grants compensation, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens.

But it would not be correct to assume that every minor infraction of public duty by every public officer would be commend the Court to grant compensation in a petition under Arts. 226 and 32 by applying the principle of public law proceeding. The Court in exercise of extraordinary power under Arts. 226 and 32 of the Constitution, therefore, would not award damages against public authorities merely because they have made some order which turns out to be ultra vires, or there has been some inaction in the performance of the duties unless there is malice or conscious abuse.

Before exemplary damages can be awarded it must be shown that some fundamental right under Art. 21 has been infringed by arbitrary or capricious action on the part of the public

functionaries and that the sufferer was a helpless victim of that act".

Few decades ago the criminal justice system adopted the idea of compensation for victim. Earlier it would have been difficult to find any criminological agency (official, professional, voluntary or other) or research group working in the field of victims of crime, or which considered crime victims as having any central relevance to the subject apart from being a sad product of the activity under study-criminality. To officials the victim was merely a witness in the court case; to researchers either the victim was totally ignored or was used as a source of information about crime and criminals.

However, in ancient civilizations the victim of an offence was the central figure in any criminal setting. In our own pre-modern polity, the injured or the victim had a vital say in matters connected with restitution or retribution. But slowly, as the one civilization gave way to another, private revenge public justice with the govt. taking on the responsibility for meting out justice, the offender has become the prima donna and the victim is completely forgotten. Penologists, jurists, psychologists, sociologists, socio-psychologists, psychiatrists, criminologists, social-workers, and the government vie with each other in finding explanations, reasons, excuses, why a crime is committed. So they give stress only and only on the crime and criminal.

Victim is totally ignored. He enters the gateway to criminal justice. He is faced with interrogation, delays, postponements, court appearance, insults at the hands of people including police officer and lawyers, loss of earnings, waste of time and frustration and painful realization dawns on him that the system does not live up to its ideals and does not serve him-it serves only itself and its minions. If the victim happens to be a woman her lot is much worse.

Problems of Victims

The assumption that by punishing the offender the victim receives 'justice' is of dubious value today because of the decreasing number of successful investigations and the still smaller number of convictions in the criminal justice system. If the victim gets back his lost property he is lucky; if he is not harassed and humiliated in the investigative and trial procedures he should thank his stars. Given the sickening delay, corruption and technicalities in proof, many victims tend to keep away from reporting crimes and sometimes take recourse to private vengeance. Either way, the criminal justice system suffers in not being able to prevent crimes or to punish the guilty when crimes occur in society. The long-term implications of the situation are indeed alarming for public security, human rights and governmental accountability.

The world is full of crime and criminals, tragedy and violence. Crime is a social phenomenon. No society primitive or modern, no country whether under developed or developing or developed is free from its clutches. The by-product of the crime i.e. victim is equally bound to emerge. The focus has mainly and always been on criminal and crime, none on victim. So, the forgotten man in the legal world and society happens to be the "victim" for whose plight remedy we have the whole system. More than fifty years ago justice Benjamin N. Cardozo of the United States Supreme Court wrote "justice, though due to accused, is due to accuser also.

The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true." Even so crime victims have not been treated fairly. Somewhere along the way the system began to serve lawyers, judges and accused, treating the victim with institutionalized disinterest. Intellectual and Government concern for victim of crime, however, are of recent vintage. The victim of crime did not become a subject of criminological research until after the end of Second World War. The pioneering work of Benjamin Mendolson, Hans Von Hentig and Stephen Schafer has remedied this glaring defect in the field of criminology and appropriately made criminology 'total' in this respect. Thus, the study of the victim, the analysis of his relationship and interaction with the criminal, his possible contribution to his own victimization and his responsibility for crime prevention was taken up.

Literature Review

Having traced beginning to 1940's, victimology remained surprisingly on the periphery of the criminological research until recent years. The attention which has been directed in recent years to that " 'poor relation' of criminal law", has led to crystalization of professional and public opinion in favour of alleviating the predicament of this forgotten figure of the contemporary criminal justice system. The present study seeks to examine various aspects of the victim's problems and hurdles they face. The crime victims confront a host of obstacles in the way of getting their legitimate due under the present system. This thesis is to depict various facets of the victims ranging from their roles and typologies, historical perspective to legislative and judicial attitude towards the idea of making victim as a whole. The idea is to explore the victim's present position in various criminal justice and legal system to future prospects for the victim.

Although writings about the victim appeared in many early works by such criminologists as Beccaria, Lombroso, Ferri, Garofalo, Sutherland, Hentig, Nagel, Ellenberger, Wolfgang and Schafer, the concept of a science to study victims and the word "Victimology" had its origin with the early writings of Benjamin Mendelsohn. Then, Prakash Talwar describes victimology as the independent study of the relationships and interactions between offender and victim before, during and after the crime. The big question here we need to know is who the victims are. The main goal of victimology is always the person of the victim. The concept of victim dates back to ancient cultures and civilizations such as Hebrews. Its original meaning was rooted in the idea of a sacrifice or scape goat.

Merriam Webster dictionary defines victim as one that is acted upon and usually adversely affected by a force agent. Oxford dictionary defines the victim as a person or thing injured or destroyed in pursuit of an object, in gratification of a passion etc. or as a result of event or circumstances. "Victim" has been defined under ICC (Inter-national Criminal Court) statute as 'natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the ICC. It includes "legal entities that have sustained direct harm to any of their property, which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.

Just as certain persons are thought to have a high probability of indulging in criminal behaviour, so also some others may

have a greater likelihood of being victimized. The part played by the victim in the origin of crime is the central problem in victimology. This, in essence is the question of responsibility; who is responsible for what and to what extent? Victim-offender relationship is one of the most important notions in victimology. Mendelsohn calls the victim and his offender the 'penal couple.' According to Von Hentig, the relationship between the victimizer and the victim are very intricate. The victim, one who suffers and the victimizer, one who harms, appear in victimization in a close interpersonal relationship and the victim plays a determinant role with the victimizer. With a thorough knowledge of the interrelations between doer and sufferer new approaches to the detection of crime will be opened. The potentialities of crime prevention will experience a vast expansion.

The traumatic experiences of the Second World War in Europe acted as a catalytic agent for thinking minds in the criminological field to concentrate their thought processes on this vital element for whose benefit, protection, and for whose peaceful existence organized society established systems of criminal justice namely, the victim. Till the end of Second World War there has been virtually no consideration of the victim's participation in the wrong doing or victim's perception of criminal justice system or compensation to the victim of crime by the criminal law and criminologist. But historically the victim once enjoyed the golden age during which his important role was recognised and also an emphasis was given for due consideration to compensation recognizing his right to physical and economic well-being in terms of human dignity.

Significance of the Study

As the modern state emerged and the government took on itself the responsibility of enforcing justice, the offender gradually became the central figure in the criminal arena. The dominating role of the victim originated from the middle ages and this is very evident from the system of "composition" (compensation). Though the victim enjoyed a golden age in the middle ages, then also it must be admitted that the restitution to the victim of crime is an ancient practice and which was inseparable link with the system of punishment. In early times, compensation and restitution were enforced for purposes of increasing the punitive sanctions against the criminal.

In those times, punishment was on the basis of revenge and cruelty and it was not uncommon for a thief to have his hand cut off or for a rapist to be castrated. The basis of primitive law was the reparation by the offender or offender's family to the victim for his loss or injury. At the time, there was no political institution to enforce law and punish the criminal, so the right to punish was vested with the victim or victim's kin. By end of the Middle Ages, it was generally reconized that the person harmed must have recourse through the common law, rather than taking the law into his or her own hands.

References

1. Karmen. Crime Victims: An Introduction to Victimology, 2000.
2. Morris. Women, Crime and Criminal Justice, Oxford, 2007.
3. Acharya Vishnugupta: Arthsastra (Chanakya).
4. Ahmed Siddique: Criminology.

5. Albert Robert R. Helping Crime Victims, Sage Publication, 2000.
6. Arjun Dev. Indira Arjun Dev and Gupta Das: Human Rights: A Source Book, NCERT, New Delhi, 2006.
7. Das BB. Victims in the Criminal Justice System, (APH Publishing Corporation), 2007.
8. Burt Gallway & Joe Hudson: Perspective on Crime Victims, 2001.
9. Cooper CR. Here's to Crime, 1937.
10. Chilperic Edwards: The Hammurabi Code, Kennikat Press, New York, 2001.
11. Devasia VV. The Phenomenon of Murder, Duttasons, Nagpur, 2009.
12. Dr. Priyanath Sen, General Principle of Hindu Jurisprudence". Durga Das Basu: Constitution of India. E.A. Fattah: Restorative and Retributive Justice Models: A Comparison, 2005.