



VICTIM COMPENSATION IN INDIA

An Analysis

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ABSTRACT -

Criminal Law is the backbone of the society. For a society to exist peacefully a robust Criminal Law and Criminal Justice System are essential. The Indian criminal laws are more than 150 years old and there is need to reform them. The present Criminal Justice System is accused centric and the victim do not have adequate representation and role in the Criminal Justice Process. While the accused gets all the rights and privileges under the Criminal Justice System, the Victim is left with nothing. The paper aims at highlighting the plight of the victim and argues for state sponsored victim compensation scheme. The working of the Victim Compensation Scheme created under Section 357A of the Cr.P.C is analysed. The changes which are needed to be brought in the Criminal Justice System to improve the position of the Victim in the Criminal Justice process

Key words: Criminal Law – Victim Justice – State Compensation

INTRODUCTION

India is one of the very few ancient civilisations in the world which had survived till date even after wave after wave of onslaught by Foreign Invaders. There had always been a matured Criminal Justice Delivery System in India in one form or another throughout India's long history. In India the justice delivery system was always localised and only exceptional cases would reach the Kings Court. Justice was delivered within the local area where the crime took place with active participation the community and the victim following the principles of Dharma.

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Active community participation ensured a scrupulous adherence of the decisions of the court by both the parties and the victim in almost all cases was adequately compensated for the losses suffered by him at the hands of the offenders. Though, it was not a perfect system it worked in most cases ending the dispute once and for all, without out dragging it further.

The basic structure of the Indian Criminal justice system remained unchanged for over millennia even after it was invaded by multiple foreign invaders time and again. Both the society and the Criminal Justice system survived where justice and restoration to the victim was of paramount importance. Even during the period of Delhi sultanate and the Mughal though the laws enforced were different the system retained its basic form and shape in most part of the country where the victim of the crime played a prominent role in the criminal justice process.

After the British started to consolidate their control in India, they started to slowly bring in their legal system into India. Indian Legal System slowly morphed into the Anglo-Saxon Common Law system, where the criminal justice system had only two major players - the State and the Offender. The Victim was pushed to the periphery of the Justice delivery mechanism. Even after more than 70 years Independence the remanence of the British legal system is found in our country. The Legal system in India has undergone a sea change in the past couple of decades bringing it on par with the international legal standards. If there is one area where the classical English Legal System is still in vogue is the Criminal Justice System, in which major law such as Indian Penal Code and Indian Evidence Act are almost 150 years old.



It is high time to reform the Criminal Justice System to bring back the importance attached to the victims of crime for maintaining sustaining peace in the society. If the victim's rights and views are not respected in the criminal Justice system and he is not allowed to play a major in the Criminal Justice process than any crime will only breed more crime and vicious circle vengeance will continue and damage the very fabric of the society.

To impress upon the need to provide greater role to the victim in the criminal justice system and the introduction of restorative justice for providing adequate compensation to the victims in the criminal justice system, it is imperative to analyse the present provision of the criminal law which deals with restorative justice and need to alter them to improve the position of the victim under criminal law to seek adequate compensation for their losses, which will be main focus of this paper.

CRIME:

Crime is a tricky word; it gets different meanings and take different forms in different parts of the world and at different points of time in history. Many jurists have attempted to define the term "Crime" Blackstone defined crime as

"An act committed or omitted in violation of Public Law forbidding or commanding".

Paul Tappan tried to definition of crime was

"Crime is an intentional act or omission in violation of criminal law committed without defense or justification, and sanctioned by the state as a felony or misdemeanor".



John Gillin. defined crime as

“An act that has been shown to be actually harmful to society, or that is believed to be socially harmful by a group of people that has the power to enforce its beliefs, and that places such act under the ban of positive penalties”

But none of the above definitions or any definition of crime for that matter is not universally accepted by all the jurists to completely define the term crime. All the above definition focuses on the offence, offender and the State. The definition of crime does not focus on the victim.

CRIMINAL LAW

Criminal Law is the body of law that defines criminal offenses, regulates the apprehension, charging, and trial of suspected persons, and fixes penalties and modes of treatment applicable to convicted offendersⁱ. It is also a body of rules and statutes that defines conduct prohibited by the government because it threatens and harms public safety and welfare and that establishes punishment to be imposed for the commission of such actsⁱⁱ. It is a part of the legal system that relates to punishing people who break the lawⁱⁱⁱ and includes laws of a state or country dealing with criminal offenses and their punishments^{iv}.



CRIMINAL JUSTICE SYSTEM

The System of Law Enforcement is directly involved in apprehending, prosecuting, defending, sentencing, and punishing those who are suspected or convicted of criminal offenses^v. It is also the system in a society by which people who are accused of crimes are judged in court^{vi}. It is also a system of law enforcement, involving police, lawyers, courts, and corrections, used for all stages of criminal proceedings and punishment^{vii} and in a generic term for the procedure by which criminal conduct is investigated, arrests made, evidence gathered, charges brought, defenses raised, trials conducted, sentences rendered, and punishment carried out^{viii}.

PENAL COUPLE:

The term penal couple does not refer to people committing a crime jointly as pair. It refers to the Criminal and the Victim. The definition of the term Crime, explanation of what happens to be a Criminal Law and the fundamentals of the Criminal Justice System it is abundantly clear that criminal law primarily focuses on the Offender. The victim who played a predominant role up until the British Rule has now been relegated to the role of a mute spectator. The victim gets pretty much nothing at the end of the trial except a satisfaction that the culprits is punished for the offences, that is if the accused is punished, that is a BIG IF. Because the conviction

VICTIM



Under the International Regime the definition for the term victim has a broader meaning. “Victims” means persons 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 omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power^{ix}.

There was no definition for the term Victim until it was inserted into the Code of Criminal Procedure code. “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^x. The Indian definition is more narrowed than that of the United Nations.

ROLE OF VICTIM IN CRIMINAL JUSTICE SYSTEM

The following are few of the roles which a victim of a crime could perform under the present legal system

- i. The Victim informs about the crime to the state agency.
- ii. He is expected to cooperate with the investigation agencies.
- iii. He is expected to appear as a witness when called for by the court.
- iv. He is expected to be satisfied with the punishment, if any given to the Offender.

Justice to the victims of crime can be ensure by conducting proper investigation of the offence and fixing accountability on the police if they fail in their duties. There must also be judicial supervision of the Investigation process to ensure a diligent investigation which is free



from legal defects. There is also a need to protect the Victims of the crime and also the Witness to ensure their active cooperation in the investigation and the trial process. It is also imperative to ensure speedy trial and speedy disposal of cases. Last but not the least PROVIDING ADEQUATE COMPENSATION FOR THE INJURY SUFFERED - the main focus of this paper.

COMPENSATION TO VICTIMS UNDER Cr.P.C

The first comprehensive code of Criminal procedure for the whole of India came into force in the year 1898. Section, 545 of Code of Criminal Procedure Code of 1898, made it possible for the court to award compensation to the victim from the fine collected from the Convict. The old Cr.P.C was repealed and replaced by the Code of Criminal Procedure, 1973 which is still in force in India. Section 357 of the present code gave the judges wider powers to award the compensation to the victim of crime. Their power to award was no longer limited to the fine imposed by them for a particular crime.

The Supreme Court had time and again come down on Subordinate Judiciary for not using the provision. Honourable Supreme Court of India has time and again come to the help of the victims, whose fundamental rights have been violated by compensating them^{xi}. The Lower judiciary cannot be faulted as most of the convicts were from poor and marginalised sections of the society, it was nearly impossible to realise the compensation from them. There was a growing voice for state compensation.



NEED FOR STATE COMPENSATION

A question may arise as to why the state should pay compensation for the crime committed by private individuals. The State is responsible for its citizen's protection, it is also responsible for maintaining law and order if a crime occurs and someone suffers a loss or an injury it is the failure of the state's duties to protect its citizen resulting in injury to him. Then state is bound to make reparation for the losses. And more so the state controls the Criminal Justice System in its entirety so it is the duty of the state to ensure complete justice.

So, when the committee on Reforms of Criminal Justice System was created by the Minister of Home Affairs under the chairmanship of Dr. Justice V.S Malimath, the fourth the terms of reference for the committee was:

“ iv. To suggest ways and means of developing such synergy among the judiciary the Prosecution and the Police as restores the confidence of the common man in the Criminal Justice System by protecting the innocent and the victim and by punishing unsparingly the guilty and the criminal.



JUSTICE MALIMATH COMMITTEE RECOMMENDATION

The terms of reference to Justice Malimath Committee were having such high ideal and aspirations. In order to achieve the above goals, the Malimath Committee made certain recommendation to ensure greater participation of the victim of crime in the trial process. The committee recommended to provide a right to the victim to be represented by an advocate of his own choice. More importantly there were also recommendations for making Victim compensation is a State Obligation and Creation of a Victim Compensation Fund by the States in coordination with the Central Government and also to enlarge the victim's right to prefer an appeal.

VICTIM COMPENSATION SCHEME^{xii}

Most of the recommendation made by the committee on Reforms of Criminal Justice System headed by Justice Malimath relating to Victim Compensation. The states are mandated to establish their own Victim Compensation Schemes in co-ordination with the Central Government to provide for compensation to the victims of crime, who are in need of rehabilitation. The Trial Court at the end of the trial is of the opinion that the compensation provided by the court is not sufficient and the court is expected to recommend the case to the State or the District Legal Services Authorities. State and District Legal Services Authorities are empowered to decide on the quantum of compensation to be paid to the Victim based upon the loss suffered by the victim or his dependants. Courts while finally disposing of the even if the accused is acquitted or discharged, the court may make a recommendation for compensation to



the State or the District Legal Services Authorities. It is also possible for the Victim to apply to the State or the District Legal Services Authorities if the offender is never traced or apprehended but his injuries are clearly identifiable.

A COMPARISON OF VICTIM COMPENSATION SCHEMES IN STATES

To implement the scheme the state started coming out with their own victim Compensation from 2011. But the schemes were diagonally opposite both in respect of the Quantum of compensation and the Number of Injuries for which compensation could be awarded. As far as the quantum of compensation concerned there is a huge variation between states, for instance in the UT of Puducherry compensation for loss of life could extend up to 5 lakhs and for Rape the quantum of compensation could go up to 3 lakhs. On the other hand, if we take the case of Chandigarh the quantum of compensation for loss of life is only one lakh and for Rape it was only fifty thousand rupees.

If we take the number of injuries for which compensation is available the State of Kerala provides compensation for up to 20 types of injuries and we take the case of State of Bihar compensation under the scheme were available to only 5 types of injuries. The Supreme Court and the Central Government intervened to create Central Victim Compensation Fund to serve as a model scheme for State Schemes to follow and to support and supplement the existing Victim Compensation Schemes notified by States. Efforts were made to reduce disparity in quantum of compensation amount and encourage States/UTs to effectively implement the Victim Compensation Schemes.



ASSESSING THE WORKING OF THE SCHEME

Compensation under this is available mostly for violent crimes. The number of violent crimes such as Murder, Culpable Homicide Not amounting to Murder, Attempt to Commit Culpable Homicide, grievous Hurt, Kidnapping, Rape, Attempt to commit rape, Rioting, Robbery, Dacoity and Arson that happened in India in the 2016 is 4,29,299, in the year 2017 it was 4,26,825.

In the same corresponding period, the details of the compensation awarded under the Victim compensation Scheme in India is here under^{xiii}. In the year 2016 as many as 13,740 applications were received from the victims directly and 4,211 applications were recommended by the Courts. Of which 7,337 applications were decided and 4,439 applications were pending. In the year 2017 as many as 9988 applications were received from the victims directly and 5867 applications were recommended by the Courts. Of which 8861 applications were decided and 7637 applications were pending

COMPARISON BETWEEN CRIME AND COMPENSATION^{xiv}

In the year 2016 there were as many as 4,29,299 cases of violent crime. There were as many as 13,740 applications were filed by the Victims directly to the Legal Service Agencies and 4,211 applications were recommended by the Court. If both the figures can be compared, it can be seen that only 0.98% of the cases reached the Legal Services Authorities for determining the compensation related claims. In the year 2017 there were as many as 4,26,825 cases of violent crime. There were as many as 9,988 applications were filed by the Victims directly to the Legal Service Agencies and 5867 applications were recommended by the Court. If both the



figures can be compared, it can be seen that only 1.37% of the cases reached the Legal Services Authorities for determining the compensation related claims

The above comparison and the percentage are calculated taking into account that one crime means one victim but it is always possible there could be multiple victims in many most crimes. Then the percentage could be even more miniscule.

Whenever a government run scheme performs very poorly the main reason attributed for the poor performance is the lack of funds. But that reason could not be sufficient to explain the dismal performance because after Horrific Rape and subsequent death of Para-medical students, the Central Government has created a Nirbhaya Fund to prevent crime against women and restitution for the victims. If we look, how the states have spent the Nirbhaya Fund, it is reported that states like Maharashtra, Manipur and Lakshadweep did not spend a rupee which it had received under the Nirbhaya Fund. The three best performing states were Mizoram which had spent about 56 percent of the fund, Uttarakhand which had spent 51 percent of the fund and Andhra Pradesh which had spent about 43 percent of the fund.

If we take the pan Indian position it is reported that only 20% of the Nirbhaya fund which has been released to the states have been spent by the states. 18 states have not utilised anything from their Emergency Response Fund and no state has used fund earmarked for Cyber Crime Prevention against women and children.



SUGGESTION: IMPROVE THE CHANCES OF A VICTIM TO GET COMPENSATION

The position of the victim under the criminal justice system is very poor and there are certain basic changes which needs to be brought into in our Criminal Laws to improve the victim's status, such as

- a. A positive duty must be created on the courts to make a recommendation to the SLSA or the DSLA for deciding the quantum of compensation if the injury suffered by the victim is covered under the Victim Compensation Scheme.
- b. If the court which tries the case does not to recommend it for compensation than the court has to record special reason for not making the recommendation.
- c. Law needs to be amended to make the victim an integral part of the Criminal Justice System.
- d. Law needs to be amended to enable the court which decides the case to decide on compensation also.



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- ⁱ <https://www.britannica.com/topic/criminal-law>
- ⁱⁱ <https://legal-dictionary.thefreedictionary.com/Criminal+Law>
- ⁱⁱⁱ <https://dictionary.cambridge.org/dictionary/english/criminal-law>
- ^{iv} <https://www.dictionary.com/browse/criminal-law>
- ^v https://www.lexico.com/definition/criminal_justice_system
- ^{vi} <https://dictionary.cambridge.org/dictionary/english/criminal-justice-system>
- ^{vii} <https://www.dictionary.com/browse/criminal-justice?s=ts>
- ^{viii} <https://legal-dictionary.thefreedictionary.com/Criminal+justice+system>
- ^{ix} UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- ^x Section 2(wa) of Code of Criminal Procedure Code.
- ^{xi} Rudal Shah v. State of Bihar, Bhim Singh v. State of Jammu and Kashmir, SAHELI, A Women's Resources Centre, through Ms. Nalini Bhanot v. Commissioner of Police, Delhi Police Head-Quarters and Ors., Nilabati Behera v. State of Orissa, State of Maharashtra v. Christian Community Welfare Council of India and many others
- ^{xii} Created under Section 357A of Cr.P.C, inserted vide. Code of Criminal Procedure (Amendment) Act, 2008 (w.e.f.31.12.2009)
- ^{xiii} <https://nalsa.gov.in/services/victim-compensation>
- ^{xiv} Ibid