

Critical analysis of victim compensation scheme under Criminal Justice System

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Abstract:

“Victimology” is a scientific study of sufferance of victims due to crime. It is now a growing branch. Students of Victimology study as to how justice should be provided to the victim of crime. It formulates the methods to determine compensation for the crime victim. It also provides remedies to the victim if compensation is not paid. For the purpose of rehabilitation, reparation of the victim or his legal heirs as the case may be, the Courts have felt it necessary to pay compensation. Merely because the offender is convicted, the victim may not get full justice. To complete the wheel of criminal justice, the crime victim shall have to be compensated appropriately. “Society” is a victim, because Society suffers the violation of its laws. Basically and generally, in India, we consider that the crime committed by a person is against the State. Only in few cases, the offences are exclusively committed not against the State but against an individual. Since we treat the crime is against the State, the State prosecutes every crime with its funds. Society is bothered of law and order problem. Society wants to punish the wrong doers by taking care of innocent people. The Society has found out the method of punishing the accused as per law i.e. with the help of Indian Penal Code, Cr.P.C. etc., The society as a victim gets justice by punishing wrong doer as per law.

Keywords: *Victim, Compensation, Schemes, India*

Introduction:

Victim compensation was a unique concept formulated by the Indian Judiciary in order to secure justice. The modern concept of justice has shown immense concern by providing relief mechanisms to compensate victims. Hence, provisions and legislations catering to victim compensation have been evolving ever since the formulation of the Indian Constitution.

The genesis of rights of the victims started fostering during the last few decades following the UN Declaration of Basic Principles of Crime and Abuse of Power, 1985. Since then, the acknowledgement that the victim comes under the under the centre of the criminal justice system arose, and consistent efforts were made in order to improve their conditions.[1]

One primary aspect to reassure and assist the victim would be compensating for the damage caused, this was considered as an essential proponent of Right to life under Article 21 of the Indian Constitution.[2] Later, Section 357A of the Code of Criminal Procedure, 1973 made it mandatory for the state to provide compensation for the victims and their dependent who has been injured as a consequence of the damage caused. Victim Compensation Schemes were formulated by almost all states of the country, to provide for appropriate compensation.[3]

Wherever there is a Society, there is crime and violence. Thus in every Society there exists two types of people: firstly, the victim and secondly, the criminal. When a person commits a crime, he is subsequently captured, tried, punished, or released on probation. It is often misunderstood that the carriage of justice come to a rest with the signing of the judgement; however, the final destination is in the lap of the aggrieved. The Court's responsibility and the State's responsibility goes hand in hand. The Court's responsibility is to maintain the impartiality of justice and the State's responsibility is to support the pillars of justice. It's a misnomer that the end of justice is achieved when the criminal is punished at the end of the trial. However the main purpose of the trial is to provide justice to the victim. The victim's condition remain unchanged because only compensation has been awarded to the victim. And most of the times such compensation is insufficient to make up for the loss borne by the victim.

Apart from directly affected victims, there are another type of victims. They are called non-direct victims. These are the people whose lives are dependent on the people who were directly impacted, and as a result, they experience agony and loss because the main victim was the major,

if not sole, earning member.¹ Now is the time for the criminal justice system to provide adequate compensation so that they can assist the victim in mending and healing injury caused by the crime. These are the persons who have suffered emotionally, physically, and financially as a result of such a crime. Thus, it is critical for the criminal justice system to focus on the victims' conditions rather than on the criminals. Further, they have to be more concerned with the victims' deteriorating conditions. They assist the state in punishing offenders; they have also become the focal point of the criminal justice system.

Victimology-related jurisprudence has extensively debated on the topic as to whom the responsibility falls. Whether the State's responsibility ends simply by registering a case, conducting an investigation, initiating prosecution, and sentencing an accused, or whether the State has a further responsibility to the victim aside from pursuing these steps. Similarly, it is unclear whether the court has a legal obligation to provide compensation regardless of guilt. However, victims of crime, including her/his family, have a genuine expectation that the state will 'find and punish' the guilty and side by side compensating the aggrieved. Even if the court system fails to identify the accused or fails to collect and provide the necessary evidence to guarantee adequate sentencing of the guilty, the responsibility of compensation remains on the State.

Since the turn of the century, the jurisprudence under Article 21 has gained traction and now includes rehabilitating the victim and/or their family. However, the scope of the victim's remedy in terms of compensation was previously limited under "constitutional remedy i.e., by invoking a writ jurisdiction. As a result, there was a need to include a specific provision for compensating victims regardless of the outcome of criminal prosecution. As a result, Section 357 A was added to the CrPC 1973.²

The term "victimology" arose from the terms *Victima* (Latin) and *Logos* (Greek). Thus literally meaning a study of offenders. During the mid-twentieth century, a diplomat (French) coined the term. This essentially refers to understanding of criminal, casualty, and associated elements.³

Victimology is the non-dependent study of the connections and interactions between the criminal and the victim before, during, and after the crime event. Victimology is a pragmatic discipline that teaches about the relationship between the wounded and the accountable person/group by investigating the causes and types of pain that have occurred. Therefore, the link between the offender and the victim is a critical part of victimology.

The Indian criminal jurisprudence has different views as to what would constitute a meaningful and effective compensation to the victim. The Criminal justice system has become so focused on the criminal's conviction that it has overlooked some of the core pre trial processes. Overlooking pre-trial processes such as often resulted into sloppy investigation, inadequate prosecution efforts, "and questionable integrity of those participating in the process" (such as police, advocates, forensic, etc). In addition, there is a lack of "infrastructure to support or accommodate development. This, in turn, has a negative impact on the quality of justice that is to be provided to the victim.

For the perpetrator, justice must be reformatory, and for the victim, it must be rehabilitative. Thus, there is a reasonable expectation that the victim will be provided with rehabilitative services, including monetary compensation. With regard to Article 21, such compensation has been required to be paid in the form of a public law remedy.⁴ In order to do justice to the victims, the Hon'ble Supreme Court has directed the payment of monetary compensation as well as rehabilitative settlements in various instances where the State or other authorities failed to preserve the victims' life, dignity, and liberty.⁵

History and Development of Compensation as a criminal remedy

Throughout history, restitution has been used as a means of justice. Prehistoric civilisations never divided civil and criminal law, but instead obliged the perpetrator to compensate the victim and/or family for any damage produced by such offence. However, the fundamental goal of such

restitution was misguided because it was intended to protect the perpetrator from taking revenge by the victim or the society rather than repaying the victim.⁶ It was a bargain made available to the offender in order for him to 'buy back' the peace he had violated.

However, these principles subsequently declined the imposition of punishment in civil torts and criminal offences over time. Compensation became a part of civil law as a victim's right rather than a remedy in the case of a crime. As a result, the duty of recompense to rehabilitate victims was removed from criminal law. The legal stance was that criminal justice was either reformatory or retributive for the aim of the perpetrator, rather than rehabilitative for the victim. However, this traditional viewpoint has recently undergone a significant shift, as societies around the world have increasingly felt that lawmakers and courts alike were failing victims of crime.

However, a system based on restitution by the criminal to the victim is particularly difficult. This is because it is essential for the offender to be captured and convicted. Apart from this, it is also necessary that the victim is able to afford the criminal trial. Since the criminal is a debtor and cannot raise money in prison, such a strategy increases the likelihood that the victim would be denied such compensation.⁷

Therefore, the ideal option appears to be to establish a State Fund from which victims are quickly reimbursed immediately after the crime. If and when the perpetrator is convicted, the court may require him to repay a specified amount to the State.⁸ This is done to guarantee that the victim is not harmed as a result of the offender's inability to pay, significant delays in the criminal procedure, or an acquittal due to a lack of evidence. This is so effective that some countries such as Canada, Australia, England, New Zealand, Northern Ireland, and the United States, have enacted legislation requiring reparation by courts delivering criminal justice.

The Law Commission Report and Section 357 of the CrPC

In 1969, the Law Commission of India submitted its 41st report. This report gave an in-depth analysis of Section 545 of CrPC, 1898. According to the report, the importance of recoverability of compensation should be enforceable in a civil court, similar to the public remedy accessible in tort. The term "*substantial*" was previously used to demarcate the severity of compensability, which excluded circumstances where nominal charges are recoverable. The Law Commission, on the other hand, argued against the delineation since the courts' discretion to apply the provision in specific situations was rarely employed in directing compensation for victims.

The Indian Parliament thus submitted the Code of Criminal Procedure Bill, 1970, based on the Law Commission's these suggestions, with the goal of amending Section 545 and reintroducing it as Section 357 as it stands today. The Statement of Objects and Reasons underlying the Bill was as follows:

"Clause 365 (now Section 357) which corresponds to Section 545 makes provision for payment of compensation to victims of crimes. At present such compensation can be ordered only when the court imposes a fine; the amount is limited to the amount of fine. Under the new provision, compensation can be awarded irrespective of whether the offence is punishable with fine or fine is actually imposed, but such compensation can be ordered only if the accused is convicted. The compensation should be payable for any loss or injury whether physical or pecuniary and the court shall have due regard to the nature of injury, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors."

As a result, the modifications made in the said Bill of 1970 were adopted into the CrPC. According to the Statement of Object and Reasons, Section 357 was "*intended to provide relief to the poorer sections of the community*". The modified CrPC, on the other hand, gave the court the authority to require the accused to pay compensation to victims of crimes "*to a larger extent*" than was previously allowed under the Code.

Analysis of Section 357

Section 545 of the Criminal Procedure Code of 1898 was the precursor to Section 357 of the present CrPC. The scope and application of this provision includes "*any order for compensation*

passed either by the trial court, Appellate Court, or by the High Court, or Court of Session while exercising their revisional jurisdiction." Under this provision, the Apex Court can also order compensation.

This section's applicability is restricted to four specific circumstances. The complainant may be entitled to such compensation so that the costs of the prosecution is covered. Any person who has incurred loss or injury due to the offence can also recover it in the aforementioned appropriate courts. The courts so empowered, can *"award such compensation to a person entitled to recover damages under the Fatal Accidents Act, when there is a conviction for causing death or abatement thereof"*. Section 357 is also applicable to cases of property injury. The courts can award *"compensation to a bona fide purchaser of property, which has become the subject of theft, criminal misappropriation, criminal breach of trust, cheating, or receiving or retaining or disposing of stolen property"*, and has been ordered to be returned to its rightful owner. Section 357, subsection (3), also allows the court to *"order the payment of compensation even if the punishment does not involve the payment of a fine"*.

Criticism of Section 357

The major drawback of Section 357 is that it can only be applied after a successful conviction. It works on the premise that the defendant must be *"identified, prosecuted, and convicted."* It does not apply in cases where the person has not been convicted, or in cases where the police have filed Closure Reports or Summary Reports disclosing the commission of the offence, but the accused who is seeking to be prosecuted has not committed the offence, or the accused has not yet been identified. In such cases, the courts are unable to provide compensation to the victim under Section 357.

Furthermore, the convicted person bears sole responsibility for the payment of compensation. As a result, the amount of compensation paid to the victim is determined by the convict's financial situation. However, this is in contrast to splitting liability between the State and the criminal, in which case the victim will be compensated. The provision makes no provision for apportioning blame to the State or determining how much compensation the State will pay. Moreover, subsection (2) of Section 357 further states that *"no disbursement of compensation shall be made, if the order imposing fine is subject to an appeal, until either on the expiry of period of limitation or when the appeal is finally disposed of."* This causes financial hardship for the victim, who may need to spend money immediately at once to compensate from the crime. The provision does not address the possibility that the victim may demand interim compensation in an emergency scenario. Furthermore, the provision does not specify when compensation will be paid.

In contrast to Section 357's limitations, Section 357A presents a better perspective on how to address the gap in delegating duty to the state. State governments are now required to develop victim compensation plans. It establishes the function of the District Legal Services Authority (DSLAs) in determining the amount to be given whether the court makes a recommendation for compensation or the victim files a claim under the state scheme. It also allows for compensation and rehabilitative measures in the event that a court-ordered compensatory order is unsatisfactory. Even if the criminal has not been found or recognised, or if there has been no trial, a claim for compensation under Section 357A can be brought.

In terms of interim support, the DLSA is required by Section 357A to provide for emergency medical aid and other remedies as determined by the relevant authority. The sole disadvantage of Section 357A is that it requires the States to announce a programme and set aside funds so that applications can be processed efficiently and victims can get compensation quickly.

Issues regarding implementation

There are a number of issues with the law's execution as intended under Section 357A. This is due to the division of responsibilities between the State authority for implementation of law, the DLSA, as well as other implementation mechanisms. As the state legislature rely on other relief

sources to pay victims, most states opt out of notifying a specific Victim Compensation Scheme under Section 357A.

The failure of States to notify a pragmatic and successful Victim Compensation Scheme under Section 357A is the greatest obstacle to achieving nationwide victim compensation accessible. Furthermore, the amount of compensation paid by various governments for different offences varies significantly. In terms of the specificity of the grounds for compensation, there is a gap that has been left open to interpretation. In terms of distribution, there is little clarity as to the stage at which compensation can be provided. This includes interim compensation and the victim's need to attend to recurrent expenditures.

There is either a lack of understanding of the existence of Victim Compensation Schemes in States where they have been notified, or a failure of the State apparatus to give compensation due to poorly planned financial allocation. Most of the times, there is a lapse of limitation period due to the lack of awareness among these victims. Furthermore, courts fail in their responsibility to ensure that compensation is not only awarded but actually obtained by the victim by failing to follow up on the compensation application.

Conclusion

In India, victim compensation schemes must be viewed as a separate entity from Section 357 or Section 357A. It must design a programme that integrates criminal provisions, civil remedies, rehabilitative support, the function of courts, and state accountability together in a harmonic manner.

India's current legal system needs to be updated and modified to meet global norms. It must also engage and include victims, not only for the purpose of making recommendations, but also as participants in order to transform the compensation scheme into a more inclusive and victim-empowering process.

The best method to guarantee that the plans under Section 357A are implemented effectively is to address the numerous difficulties in each CrPC provision with an emphasis on outcomes. Furthermore, in order to achieve national success, all States must collect ideas and announce a unified framework for determining the principles and payment of compensation. All States must additionally raise public awareness of the Victim Compensation Scheme and the application process. When several relief fund programs are available, States must acknowledge that these schemes serve the victims' best interests, and hence should not deliberately block victims from using more than one schemes at the same time. Furthermore, when the competent body denies compensation, a responsive remedial procedure must be available to help the applicants in their appeal.

Most compensation plans have a very strict mechanism for seeking compensation. Requirements such as a medical report may cause a delay in the payment of compensation that the victim desperately needs. As a result, the extent of interim compensation must be determined and made available. Furthermore, most schemes focus solely on compensation payout rather than follow-up on rehabilitative support, treating only obvious physiological impairments and persistent mental disabilities while ignoring the victim's mental trauma. Furthermore, most youngsters recognise they were molested at later stages of their life, after the physical signs of the assault have vanished. As a result, people who have exceeded the legal time limit must be granted amnesty.

The courts, the police, the DLSA, and the State Legal Services Authority must all work together more efficiently. Each instrument must provide information to the victim and aid them in obtaining compensation. In addition to this, if the courts determine that compensation is warranted, they must provide recommendations for compensation.

References:

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5 *Nilabati Behera vs. State of Orissa*, MANU/SC/0307/1993

6 *Dilip S. Dahanukar v Kotak Mahindra Co. Ltd. and Anr*, MANU/SC/1803/2007

7 Novack, M.J. (1970). Crime Victim Compensation: The New York Solution. *Alb. L. Rev.*, 35, 717.

8 *People v Becker* (1957) 349 Mich. 476

