

Victim Compensation: Judicial Approach towards Compensatory Jurisprudence

Dr. Justice G.Jayachandran.

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- Victim Compensation Schemes (VCS)
- Final and interim compensation
- Recording reasons for awarding/refusing compensation
- Victims of crimes: Similar compensation for the similar loss
- Writ Court and Grant of Compensation

- The justice to the victim of crime can be rendered in two ways:
- i) Punish the offender.
- ii) Punish the offender and also Compensate the victim.
- To give complete satisfaction to the victim, it is extremely essential to provide some relief to him in the form of compensation.

- In ancient Hindu law, awarding compensation was treated as a Royal Right.

Sir Henry James Sumner Maine

- "Penal laws of ancient communities are not the law of crimes, it is the law of wrongs. The person injured proceeds against the wrong done by an ordinary civil action and recovers compensation in the shape of money damages if he succeeds."

[Maru Ram & Ors. Vs Union of India & Ors, AIR 1980 SC 2147.

- Victimology must find fulfillment 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.- Krishna Iyer J.

Code of Criminal Procedure of 1898

- Section 545- Under Clause (b) of Sub-section (1) of Section 545, the Court may direct “ the payment to any person of compensation for any loss or injury caused by the offence when **substantial** compensation is, in the opinion of the Court, recoverable by such person in a Civil Court.”

Section 357 Cr.P.C., 1973

Order to pay compensation.

- (1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-(a) in defraying the expenses properly incurred in the prosecution;
- (b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

- [\(c\)](#) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;
- [\(d\)](#) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

- [\(2\)](#) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.
- [\(3\)](#) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

- (4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.
- (5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

- **Under the old code** compensation can be ordered, when the Court imposes a fine and only when, in the opinion of the Court, **substantial** compensation is recoverable by such person in a Civil Court. The compensation is limited to the amount of fine.

Under the new code, compensation can be awarded irrespective of whether the offence is punishable with fine and fine actually imposed, but such compensation can be ordered only if the accused is convicted.

UN Declaration of Basic Principles of Justice for Victims for Crimes & Abuse of Power, 1985

- The victim's perspective emerged in a new and powerful way after UN declaration which recognised four major needs of crime victims:
- Access to justice & Fair treatment,
- Restitution,
- Compensation &
- Assistance.

- Expanding scope of Article 21 is not limited to providing compensation when the State or its functionaries are guilty of an act of commission but also to rehabilitate the victim or his family where crime is committed by an individual without any role of the State or its functionary. Apart from the concept of compensating the victim by way of public law remedy in writ jurisdiction, need was felt for incorporation of a specific provision for compensation by courts irrespective of the result of criminal prosecution.

- Section-357A was inserted by the CrPC (Amendment) Act,2008 (w.e.f.31 Dec.2009) on the recommendation of the Malimath Committee Report on 'Reforms of Criminal Justice System,2008'.

CrPC : Chapter XXVII Section 357 A

Victim compensation scheme

Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who, require rehabilitation.

- Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1)
- If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

- Where the offender is not traced or identified or no trial takes place, the victim or his dependents may apply to the State or District Legal Service Authority for award of compensation.
- After due inquiry such authorities shall award adequate compensation by completing the inquiry within two months. Such compensation can be awarded even in the case of acquittal or discharge of the accused.
- Section-357B & Section-357C were inserted by Act 13 of 2013 CrPC Amendment (w.e.f.3 Feb.2013).

- Section-357B provides that the compensation payable by the State Government under Section-357A shall be in addition to the payment of fine to the victim under Section-326A, 376AB, 376D & 376DB of IPC, 1860.
- Section-357C provides that all hospitals, public or private, whether run by Central Government, State Government, local bodies, or any other person shall immediately provide the first-aid or medical treatment, free of cost to the victims of any offence covered under Section - 326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or Section-376E of IPC,1860 and shall immediately inform the police of such incident.

- The Government introduced the Central Victim Compensation Fund (CVCF) Scheme to enable support to victims of rape, acid attacks, human trafficking, women killed or injured in cross border firing. Nirbhaya Fund is being used in CVCF.
- The Supreme Court approached the National Legal Service Authority Compensation Scheme for women victims or sufferer of sexual assault or other crimes, 2018 as per which the minimum compensation should be 4 lakh rupee and said it will also extend to minor victims.

- Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.
- On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
- The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer incharge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

In Hari Krishan and State of Haryana v. Sikhbir Singh AIR 1998 SC 2127

- , referring to provisions for compensation, the Hon'ble Supreme Court observed:-
- "10. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling 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. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way."

Hon'ble Supreme Court directed payment of monetary compensation as well as rehabilitative settlement where State or other authorities failed to protect the life and liberty of victims.

- **Kewal Pati Vs. State of U.P. (1995) 3 SCC 600** (death of prisoner by co-prisoner)
- **Supreme Court Legal Aid Committee Vs. State of Bihar, (1991) 3 SCC 482** (failure to provide timely medical aid by jail authorities)
- **Chairman, Rly. Board Vs. Chandrima Das, (2000) 2 SCC 465** (rape of Bangladeshi national by Railway staff),

- **Nilabati Behera Vs. State of Orissa, (1993) 2 SCC 746** (Custodial death),
- **Khatri (I) Vs. State of Bihar (1981) 1 SCC 623** (prisoners' blinding by jail staff)
- **Union Carbide Corporation Vs. Union of India, (1989) 1 SCC 674** (gas leak victims).
- **Manish Jalan vs State of Karnataka (11 July 2008)** - Supreme Court observed that the quantum of compensation is to be determined by taking into account the nature of crime, injury suffered and the capacity of convict to pay compensation. Nevertheless, the amount of compensation should be reasonable.

- **Nipun Saxena vs Union of India** (11 Dec. 2018) - By noting drawbacks of existing schemes, the apex court found it fit to direct the National Legal Service Authority (NALSA) to frame a scheme for victims of sexual offences including the offences falling under the Protection of Children against Sexual Offences Act. (POCSO)

S.S. Ahluwalia vs Union of India (16 March 2001) - The Supreme Court agreed in principle that the Government should pay compensation to the family members of the persons killed in the riot.

Hari Kishan vs Sukhbir Singh (25 Aug. 1988) - The apex court said awarding compensation is a measure of responding appropriately to crime as well as reconciling the victim with the offender.

In Ankush Vhivaji Gaikwad Vs. State of Maharashtra, (2013) 6 SCC 770

The matter was reviewed by the Hon'ble Supreme Court with reference to development in law and it was observed :

“ The long line of judicial pronouncements of this Court recognised in no uncertain terms a paradigm shift in the approach towards victims of crimes who were held entitled to reparation, restitution or compensation for loss or injury suffered by them. This shift from retribution to restitution began in the mid 1960s and gained momentum in the decades that followed.”

Suresh & Anr vs State Of Haryana (28th November, 2014)

- The trial Court convicted and sentenced the accused for kidnapping and murder and concealing evidence in conspiracy and by common intention. On appeal High Court as well as the Sur[eme court confirmed the conviction.
- Then the question arose, is whether the responsibility of the State ends merely by registering a case, conducting investigation and initiating prosecution
or
- Whether apart from taking these steps, the State has further responsibility to the victim.

Karan Vs, 2020 DLT 352

- The Delhi High Court, has devised a formula of Victim Impact Report to determine the quantum of compensation to the victim in conjunction with the paying capacity of the accused. The Victim Impact Report is to be filed by the Delhi State Legal Services Authority (DSLISA) in every criminal case after conducting a summary inquiry.

After the conviction of the accused, the trial Court shall direct the accused to file the affidavit of his assets and income within 10 of crime on the victim, the expenses incurred on prosecution as well as the paying capacity of the accused. A summary inquiry is conducted to ascertain the impact the capacity to pay the compensation or the compensation awarded against the accused is not adequate for the rehabilitation of the victim, the Court shall invoke Section 357-A of the Cr. P. C to recommend the case to DSLISA to award compensation from the Victim Compensation Fund under the Delhi Victims Compensation Scheme, 2018.

AIR 1989 MADRAS 205 (R. GANDHI AND OTHERS v. UNION OF INDIA AND ANOTHER),

- This case related to a Public Interest Litigation seeking redressal for the trials and tribulations undergone by the minority Sikh Community of Coimbatore in the wake of assassination of Smt. Indira Gandhi on 31st October, 1984.
- "7. ... It needed no political sagacity or administrative maturity to gauge the feelings of the people and anticipate the potentiality for mischief by anti-social elements taking advantage of the situation and including in acts of murder, arson and looting. . . . Unfortunately the law enforcing authorities failed to give protection to the properties, residential and non-residential, stock-in-trade and household articles of these members of the Sikh Community. As a result, the unruly hooligans took the situation under their control, ransacked these buildings, looted the valuables and set fire thereto. Their motor vehicles have also been consigned to fire. In this process of destruction the properties of some members of the other communities in the vicinity shared the same dismal fate. ..."

1989 Mad followed

- In Inderpuri General Stores & another –vs- UOI by J & K High Court
- In J.K Traders —vs- St.of AP and others. by AP High Court.

P.P.M. Thangaiah Nadar Firm vs The Government Of Tamil Nadu on 29 September, 2006 (Full Bench)

- Point of reference:
- whether it is obligatory on the part of the State to compensate the loss caused to the properties due to communal clashes, particularly when the right to hold and acquire the property protected under [Article 19\(1\)\(f\)](#) of the Constitution has been deleted.

- Answer :

Notwithstanding the deletion of [Article 19\(1\)\(f\)](#) and [Article 31](#), in case where a person is deprived of his property without authority of law, such person can protect the right recognised under [Article 300A](#) by approaching the High Court under [Article 226](#), of course within the known parameters of jurisdiction under [Article 226](#).

Writ Court and Grant of Compensation

- The Supreme Court or the High Court are entitled to render compensatory justice by awarding reasonable monetary compensation under [Article 32](#) or 226 of the Constitution of India, for the injury mental, physical, fiscal suffered by the individual for violation of fundamental rights guaranteed under the Constitution. But, however, it must be conclusively established that the State failed to take any positive action in protecting the fundamental rights of the citizens.
- It is not necessary that the victim should approach the Civil Court by invoking common law remedy for claiming damages for violation of the fundamental rights. The option is left to the victim to claim the damages by invoking either the constitutional remedy or civil remedy. Since the constitutional remedy is a public law remedy, the actual victim need not approach the Court. The relief can also be awarded either by exercise of suo motu power or in a public interest litigation case.

Lucknow Development Authority –vs- M.K.Gupta: 1993 CCJ 1100 (SC),

- The Supreme Court observed as follows :
“The administrative law of accountability of the public authorities for their arbitrary and even ultra vires action has taken many strides. It is now accepted both by this court and English courts that the State is liable to compensate for loss or injury suffered by a citizen due to arbitrary action of its employees.”

The Chairman, Railway Board and others –vs- Chandrimadas and others : (2000) 2 SCC 465

- "11. Having regard to what has been stated above, the contention that Smt. Hanuffa Khatoon should have approached the civil court for damages and the matter should not have been considered in a petition under Article 226 of the Constitution, cannot be accepted. Where public functionaries are involved and the matter relates to the violation of Fundamental Rights or the enforcement of public duties, the remedy would still be available under the Public Law notwithstanding that a suit could be filed for damages under Private Law."