

THE GROWTH OF VICTIM COMPENSATION IN INDIA

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Abstract

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The very object of criminal justice system is to punish the offender and to protect the society against crimes. Traditional criminal justice administration was based on the concept that the victims of crime get justice when the criminal gets convicted and he is sentenced to imprisonment. The traditional criminal sanctions are not successful enough to further the interests of the criminal justice system. The experiences of countries worldwide have shown that an effective way to address the many needs of victims of crime is to establish programmes within criminal justice and social institutions that will provide psychological, social, emotional and financial support. At present the concept of victim compensation is rapidly developing. By way of compensatory jurisprudence, the victim is not forgotten in the criminal justice system. The paper traces down the evolution and current position of victim compensation in India.

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1. Introduction

The sufferings of the victims of crime are not new. However, the concern regarding the victims of crime is of recent origin. History shows that victims of crime were once considered to be forgotten man of the criminal justice system. But this was not the situation for victims of crime all the time. The victims of crime too had a golden age during which there was recognition of victims' important role and an emphasis on compensation. Around the world, many legal codes had provisions for the injured parties to receive money or valuables from the wrongdoer in order to compensate the pain and suffering and losses that they underwent.

Last few decades saw throughout the world an increasing interest on legislations to provide monetary compensation to the victims of crime. However, the system of compensation is not a new concept. Rather the system of compensation can be traced back to the middle ages and reference about it can be found in the Germanic common laws. The ancient Babylonian code of Hammurabi made the earliest mention regarding governmental compensation for crime victims. The Code laid down that "If the brigand be not captured, the man who has been robbed, shall, in the presence of god, make an itemized statement of his loss, and the city and the governor, in whose province and jurisdiction the robbery was committed, shall compensate him for whatever was lost."

The concept of compensation can also be traced down to the *Manusmriti*. Chapter VIII of the *Manusmriti* provided that:

287. If a limb is injured, a wound (is caused), or blood (flows, the assailant) shall be made to pay (to the sufferer) the expenses of the cure, or the whole (both the usual amercement and the expenses of the cure as a) fine (to the king). 288. He who damages the goods of another, be it intentionally or unintentionally, shall give satisfaction to the (owner) and pay to the king a fine equal to the (damage).

However, the recent growing concern regarding victims of crime is the result of the works of Margery Fry, an English penal reformer. It was in the year 1951 that Margery Fry wrote *Arms of the Law* wherein she revived for the modern society the ancient concept of state aid to victims of

crime. It was the effort of Margery Fry that led to the establishment of the first ever state-operated victim's compensation fund in New Zealand in the year 1963. The year 1964 saw Britain adopting the Criminal Injuries Compensation Scheme which laid down schemes for state-funded compensation programs. Compensation programs in the United States of America (USA) was first established in California in 1965 and thereafter such programs exists in all states.

At the international level too, there was felt need for compensating the victims of crime. The General Assembly of the United Nations (UN) in its 96th plenary meeting on 29th November, 1985, adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN Declaration, 1985). This UN Declaration, 1985 was "based on the conviction that victims should be treated with compassion and respect for their dignity and that they are entitled to prompt redress for the harm that they have suffered, through access to the criminal justice system, reparation and services to assist their recovery." The UN Declaration, 1985 talks about compensation to be made available to the victims by the State when compensation cannot be fully recovered from the offender or other sources

2. Conceptualizing Victim Compensation

In today's era of victimological research, there has been a substantial growth in interest to study the impact of crime on victims and the various ways to assist them. Providing compensation is considered as one of the ways of assisting the victims of crime. In recent past, there has been a development with regard to providing compensation to victims of crime. However, the concept of victim compensation is not a new one. This form of remedy existed in the past in many historical places such as ancient Greece and Rome, biblical Israel, Teutonic Germany, and Saxony England. However, for various reasons this form of remedy lost its usefulness in the Middle Ages. In modern times, the philosophy of compensation has found many adherents. In the writings of Jeremy Bentham, the philosophy of compensation found an expression. He argued that society was morally obliged to compensate the victims of crime because of the failure of the society in providing protection. As already mentioned, modern day revival of victim compensation owes its credit to the efforts of Margery Fry, an English penal reformer.

Victim Compensation refers to payments made by the government to the victims of crime. The concept of victim compensation differs from restitution. Restitution deals with the offender

making payments either by way of money or service to the victim of crime. According to Stephen Schafer in a criminal victim relationship, compensation “concerns the counterbalancing of the victim’s loss that results from the criminal attack.” (Schafer, 1977, 112-113).

Many arguments have been advanced in favor of victim compensation. One such argument is the social contract agreement. According to it the “government, through its system of taxation, and provision of services, engages in an unwritten contract to care for the safety and well-being of its citizens.” (Doerner and Lab, 2012, 130). Citizens have handed over to the government the power of law enforcement in exchange for protection. The experience of being a crime victim, without one’s own fault, “represents an affront to this agreement because the government has failed to keep its promise. As a result, it is incumbent upon government to restore victimized citizens to their former status.” (Doerner and Lab, 2012, 130). The other argument is that of social welfare. According to it, the government tries to provide a minimum standard of living for its deprived, disabled and unfortunate citizens. The innocent crime victims fall into this category of citizens because their sufferings are not self-induced. It is for this reason that the government should come forward and help rescue the crime victims through its welfare practices. By choosing the argument of social welfare, it can be said that “in this scheme, only poor people should be eligible for compensation benefits.” (Doerner and Lab, 2012, 130). Whereas under the social contract argument, compensation should be available to everybody, irrespective of their financial status. Another view put forward for victim compensation is that by way of victim compensation the victim is lured back to the criminal justice system. It is not only that by way of victim compensation there is a potential to promote good will amongst the victim and the criminal justice system. There is also a chance of increase in rate of crime clearances.

3.DEVELOPMENT OF THE CONCEPT OF VICTIM COMPENSATION IN THE INDIAN SOCIETY

Tracing down to early Indian society, when there was no State, it was the victim who punished the offender through retaliatory and revengeful methods. With the formation of group life, Dharma started governing the people of India and it was an ideal society. As State came into existence under the authority of the King, a system developed to enforce law and punish the offender. In the early Vedic period, retribution was the main element in the criminal law.

Mention of victim compensation is found in *Smritis*, *Arthashastra*, *Manusmriti*. With the beginning of Muslim period in India, a lot of change happened. The principles of ‘tooth for tooth’ and ‘an eye for an eye’ governed this period. Slowly with time, these principles gave way to the practice of payment of compensation by the offender to the victim or his relative. With the advent of British in India, gradually the Muslim criminal law was done away with Indian Penal Code superseding it. The Code of Criminal Procedure, 1898 had a provision regarding compensation under section 545. Then in Code of Criminal Procedure, 1973 under section 357 a provision is there whereby the court could award compensation while awarding sentence. With the coming of Code of Criminal Procedure, adversarial system found its way in India. But in today’s date, Code of Criminal Procedure, 1973 by way of an amendment in 2009 for the first time defined victim under section 2(wa) and also introduced section 357A which dealt with victim compensation schemes (VCS). By virtue of section 357A of the Code of Criminal Procedure, 1973, all the States / Union Territories (UT) enacted VCS.

Prior to such provisions in the Code of Criminal Procedure, 1973, concern regarding victims of crime was raised time and again by the judiciary. The Supreme Court of India in 1979 in the case of *Rattan Singh v. State of Punjab* (1979) 4 SCC 719 lamented against the complete desertion of the victim in the criminal jurisprudence of India. The Court observed that ‘victim reparation is still the vanishing point of our criminal law.’”

In the case of *Maru Ram v. Union of India* (1981) 1 SCC 107 , Krishna Iyer J., held 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 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.

The Supreme Court of India in *Dayal Singh v. State of Uttaranchal* (2012) 8 SCC 263 held that the criminal trial is meant for doing justice to all – the accused, the society and the victim.

“Tears shed for the accused are traditional and ‘tendy’ but what has the law done for the victim of crime, the unknown martyr?”(Makkar, 1993, 147). This observation made by Justice

V.R.Krishna Iyer in his article on ‘The criminal process and Legal Aid’, made it clear “that the criminal law in India is not victim oriented rather it is offender oriented and the sufferings of victim, often immeasurable, are entirely overlooked in misplaced sympathy for the criminal” (Makkar, 1993, 147).

4. CENTRAL VICTIM COMPENSATION FUND (CVCF) GUIDELINES

As mentioned earlier, post insertion of section 357A in Code of Criminal Procedure, 1973 all the States / UT enacted VCS. These VCS laid down their own eligibility criteria for grant of compensation, procedure for grant of compensation, limitation period for filing claims for grant of compensation etc. These schemes also provided amount of compensation to be paid for particular kind of injury / loss. These rates of compensation for various injuries or losses varied across the VCS of the States / UT. Concern had been raised time and again regarding such disparity. Finally, in order to remove such disparity, the Ministry of Home Affairs (MHA) on October 14th, 2015 set up a Central Victim Compensation Fund (CVCF). All State Governments and UT were requested to modify their VCS suitably. On July 13th, 2016, the MHA through a letter to all the Chief Secretaries of all State Governments/ Union Territory administrations informed that the Central Victim Compensation Fund Scheme has been modified to provide one time grant to State/ UT instead of releasing fund on time to time basis. The scheme is now known as the Central Victim Compensation Fund (CVCF) Guidelines-2016 and it has come into force with effect from July 6th, 2016. The size of the CVCF will be Rs.200 crore. The one time budgetary grant of Rs. 200 crore for CVCF has been sanctioned out of the “Nirbhaya Fund” which is meant for tackling crime/violence against women.

The Objective of setting up of the CVCF are:

- i. To support and supplement the existing VCS notified by States/UT Administrations.
- ii. To reduce disparity in quantum of compensation amount notified by different States / UT for victims of similar crimes.
- iii. To encourage States/UT to effectively implement the VCS notified by them under the provisions of section 357A of CrPC and continue financial support to victims of various crimes especially sexual offences including rape, acid attacks, crime against children, human trafficking etc.

In order to access the funds from CVCF, the State / UT have to fulfill the following requirements:

- a. The State/UT must notify the VCS as per provisions of section 357A of CrPC.
- b. The quantum of compensation notified should not be less than the amount mentioned in the Annexure of the guidelines.
- c. State /UT shall get one time grant from CVCF and the amount so received shall be utilized by State / UT for disbursements under their respective VCS.
- d. Any expenditure incurred from the State Victim Compensation Fund to assist the victims will be treated to be first spent from the non-budgetary resource available in the State Fund. Budgetary grant received from the Central Government/State Governments/UT Administration will be used only after consuming the non-budgetary resource.

The activities of CVCF will be

- a. To obtain funds in MHA to supplement and support the Victim Compensation Schemes notified by the States/ UT administrations,
- b. To provide special financial assistance up to Rs. 5 Lakhs to the victims of acid attack to meet treatment expenses over and above the compensation paid by the respective States/ UT.

Following are the procedure regarding approval and release of funds from CVCF

- a. States/UTs will get one time grant from CVCF to support the victim compensation to the eligible victims following the procedure and timeframe provided in their respective schemes. The grant will be credited to Consolidated Fund of respective States/UTs.
- b. The State Governments/UT Administrations shall submit periodic reports regarding implementation of their respective Victim Compensation Schemes.
- c. The empowered Committee shall normally meet once in a year, or sooner, if required, to assess the functioning of State/ UT Victim Compensation Schemes.
- d. UT Administrations shall route their reports through UT Division, MHA.
- e. The Empowered Committee shall have the power and the authority to seek further reports from the concerned States/ UTs.

5. Conclusion

India has come a long way regarding victim compensation since the amendment to Code of Criminal Procedure Code in 2009. In recent times, India has started taking initiatives in

providing compensation to the victims of crime through the VCS and CVCF guidelines 2016. It is imperative in today's time of victimological research, that victims of crime be provided monetary assistance. To be an effective criminal justice system, India cannot ignore the plights of the victims of crime. What is needed is an effective implementation of the VCS in India. Also the stakeholders of the criminal justice system and the society at large needs to be victim sensitive. There has to be awareness of such VCS. Victims of crime cannot be ignored anymore. Providing victim compensation ensures that the rights of the victims of crime are respected.

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