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## Victim Compensation ; Current challenges

Paramvir singh Parmar, LL.B. LL.M, Practicing at Bar Association Jhajjar<sup>1</sup>

### Abstract

Being the welfare state, India has provided a police and judicial mechanism for the investigation of the crime and trial of the accused. It was presumed that crime and punishment is equal to innocence. It means when any person commits the crime and he is tried and punished for the same, he has again become an innocent person and eligible to live in society as he was living before his committing the crime and it is presumed that justice has been provided to the victim. The ambit of Indian criminal justice was fixed merely to convict the accused on the presumption that convicting the accused is sufficient remedy for the victim. Concentrating only upon the reformation and rehabilitation of the accused the legislature forgot to think that it is the victim who needs to be rehabilitate first. But by the passing of time, the presumption drawn by the legislature has been set aside when specific provisions have been provided in the criminal justice system for compensation to the victim either at the cost of the guilty accused or the state.

Key words: compensation, victim, rehabilitation, reformation, presumption.

### Introduction

Suffered a lot in the slavery period and after getting independence while making the laws, Indian legislature framed many laws for the welfare of people. The state granted various rights and ensured its protection by providing strong criminal justice system. In criminal law, various acts or omissions are made as offence and punishable. The entire focus of the law is upon providing justice to the victim by punishing the offender and providing him the opportunity for reforming himself and rehabilitate in the society again as law abiding citizen. But in all this process the victim has been completely ignored who has suffered a lot and paid the cost of crime from his own account in the form of either of his life, money or any other thing. After taking in to consideration the need of time regarding compensation to victim of disaster offences like murder, acid attack etc. specific provision was inserted in the Code of Criminal Procedure for victim compensation scheme under section 357-A, 357-B, 357-C.

## 1. Who is victim

The definition of “Victim” has been provided under the code of criminal procedure under section 2 (wa) which was inserted in 2009 as “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 includes the legal heirs or guardian of the victim”. A specific definition is provided in the code however, the definition is not exhaustive. We can't say he victim is the person who has suffered loss or injury due to the wrongful act or illegal omission of the other who has been charged for such act or omission. The term also includes the person though has been charged for the offence but found innocent after trial and even after undergone and completing the punishment. Therefore the term victim can be classified in to following categories:

### (a) Victim of offence:

Generally the term “victim” is considered with reference to the person against whom any offence has been committed and due to which he has suffered loss or injury. For every wrong, two persons are necessary, one is the person who commits the wrongful act or does any illegal omission and another is the person who becomes the target of such act or omission.

### (b) Victim of false accusation and trial:

In the second category, those persons are included who although have not committed any crime but have to face the trial and even undergo the prison for false accusation. The incidents are not new when the innocent persons have to face trial for the offences and some time very serious crimes which they have not committed. The latest case in this reference is of **Vishnu Tiwari**<sup>2</sup> was arrested on the accusation of a scheduled caste woman stating that she has been raped by the Vishnu Tiwari. Vishnu Tiwari was held guilty for rape and under SC,ST, act in the year 2000. He filed an appeal in High Court of Allahabad and was held not guilty and acquitted in 2021. But he spent about 20 years in the jail in spite of the fact that he was innocent. The definition of the term “victim” under section 2 (wa) of code of criminal procedure does not include the victim of false trial.

Section 357-A and 357-B as inserted by amendment act 2009, provides the provision for compensation to victims and also that the compensation shall be in addition to the payment of fine in the case of acid attack<sup>3</sup> and gang rape<sup>4</sup>. The provisions for victim compensation provide the relief only to the victims of first category and provision of none of the section provides for the relief for the victims of second category.

<sup>2</sup> Vishnu Tiwari vs. State of U.P. 2021 Allahabad H.C.

<sup>3</sup> Section 326-A of Indian Penal Code, 1860

<sup>4</sup> Section 376D of Indian Penal Code, 1860.

What is provided in the criminal procedure code is only that compensation not exceeding on thousand rupees shall be to the person who has been groundlessly arrested.<sup>5</sup>

## 2. What is victim compensation

Victim compensation is the financial help to the victim of any wrongful act or omission against him which resulted in any loss or injury to him. Provision is made to provide this financial help to the victim so as the victim can meet his medical expenses or the cost of the proceedings which he incurred. Such financial help may be to compensate the victim for the loss caused by loss of job due to inability to work after the incident etc.

## 3. Law relating to victim compensation in India

On the recommendations of Malimath Committee section 357A and section 357B were inserted in the code of criminal procedure, 1973 through 2009 amendment act which provide for scheme for victim compensation and also that the compensation as provided in this section shall be in addition to the fine as provided under section 357 of Cr.p.c. Before the insertion of these sections there was no provision for victim compensation, however, the provision for ordering the accused to pay compensation to the victim was provided under section 357 of Cr.p.c. The specific provisions for victim compensation are as under:

### (a) Section 357 of Code of Criminal Procedure

Section 357 was originally incorporated in the ode of Criminal Procedure, 1973, which was given place in the code on the recommendations of 41<sup>st</sup> Law Commission which submitted its report in 1969. The commission discussed section 545 of old Cr.p.c. 1898 and gave its opinion in favour of incorporating the present section 357 which empowers the court which has jurisdiction to impose fine in addition to imprisonment to order the accused to pay such fine to the victim which can be used by the victim for defraying the expenses properly incurred in the prosecution or to pay the medical expenses for treatment of the victim or for compensating any bona fide purchaser of the property who has purchased the property against which the offence of theft, criminal breach of trust, criminal misappropriation of property or cheating has been committed.

### (b) Section 357-A of Code of Criminal Procedure

Section 357-A specifically provides for the victim compensation scheme, however, this section was not originally incorporated in the criminal procedure code. The need was felt when there was no adequate relief to be provided for the victim of such offences from which it was not easy for the victim to recover and

<sup>5</sup> Section 378 of Code of Criminal Procedure Code, 1973.

rehabilitate such as acid attack, rape etc. In such type of offences, the victim either died or had to pay lots of amount for treatment if the victim remained alive. Taking in to consideration all the consequences, the legislature inserted section 357-A, and in supplement section 357-B for providing compensation in addition to fine which can be imposed upon the accused. Section 357-A provides that the State Govt. shall prepare the scheme for providing compensation to the dependents or the victim who has suffered loss<sup>6</sup> and the amount of compensation shall be decided by the District Legal Services Authority or State Legal Services Authority.<sup>7</sup> Such provisions for compensation can also be made even when the accused is not identified.<sup>8</sup>

#### (c) Section 357-B of Code of Criminal Procedure

In supplement to the above said provisions, it is also provided through section 357-B that the compensation payable shall be in addition to the fine awardable to the victim of acid attack under section 326A and gang rape under section 376D of IPC. The relief granted under this section is provided additional relief to the victim of acid attack or gang rape so as to enable her for rehabilitation and treatment which though can never ends the mental and physical pain she suffered but can minimize it.

#### (d) Constitution of India

The Hon'ble Supreme Court has expanded the ambit of fundamental right to life and personal liberty so as to include right to compensation to the victim. In the case of Rudal Shah vs. State of Bihar<sup>9</sup> the apex court awarded compensation of Rs. 35,000/- to the victim who was detained in the prison for a long period of 14 years even after he was acquitted. After the case of Rudal Shah, the apex court in various other cases reiterated its order of making compensation as an integral part of right to life and liberty, such as Bhim Singh vs. State of J&K<sup>10</sup>, Dr. Jacob George vs. State of Kerala<sup>11</sup>, Manju Bhatiya vs. N. D. M. C.<sup>12</sup> and many other cases.

### 4. International Perspective

Provisions for granting relief and for reparation have also made at international level. The Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic Social and Political Rights and Covenant on Eliminating all forms of Discrimination against women and children provide for rehabilitation and reparation laws and these covenant impose an obligation

<sup>6</sup> Section 357-A (1) of code of criminal procedure, 1973.

<sup>7</sup> Section 357-A (2) of code of criminal procedure, 1973.

<sup>8</sup> Section 357-A (4) of code of criminal procedure, 1973

<sup>9</sup> AIR, 1983, SC

<sup>10</sup> AIR, 1985, SC

<sup>11</sup> AIR, 1994, SC

<sup>12</sup> AIR, 1998, SC

upon India being the signatory of such international instruments to make laws for victim compensation based upon such instruments.

## 5. Judicial approach

There are countless cases in which the Hon'ble Apex court while protecting the fundamental right of the people of right to life and liberty awarded compensation to the victim before or after the introduction of specific provision regarding victim compensation scheme under criminal procedural law. For better understanding, the cases can be classified in to two categories:

### (a) Cases under the Constitution

However, the legislature has made specific law for victim compensation, but the Apex court has perfectly performed its duty to protect the fundamental rights of the people as a guardian of such rights. The principle of payment of compensation to the victim was evolved by the apex court on the ground that it is the duty of welfare state to protect the fundamental rights of the people and declined to accept the doctrine of English law that "king can do no wrong".

In the case of *Rudal Shah vs. State of Bihar*<sup>13</sup> the apex court directed the State Govt. to pay compensation to the petitioner (Rudal Shah) who was kept in jail for 14 years even after he was acquitted from trial court. The petitioner was not released from the jail and then he presented a writ petition of Habeas Corpus before the apex court. The apex court not only ordered for his release at only but also directed the state govt. to pay Rs. 35,000 to the petitioner as compensation. Another case in this reference is the case of *Bhim Singh vs. State of J & K*<sup>14</sup> where the petitioner Bhim Singh, who was an M.L.A arrested by police while he was going to attend the assembly to prevent him to attend the assembly. The apex court awarded compensation of Rs. 50,000 to be paid by the state govt. to the petitioner.

In the case of *Ravikant Patil vs. Director General of police*<sup>15</sup> the Bombay High Court awarded compensation to the petitioner who was accused taken handcuffed before to court. The Bombay H.C. stated that this act of police personals was the violation of the Judgment of Hon'ble apex court pronounced in the case of *Prem Shukla Vs. Delhi Administration*<sup>16</sup>.

In the case of *Nilabati Behra vs. State of Orissa*<sup>17</sup>, The apex court awarded compensation of Rs. 1,50,000 to be paid by police authority to the petitioner whose son was arrested by police and next day the body was

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<sup>13</sup> AIR, 1983, SC

<sup>14</sup> AIR, 1985, SC

<sup>15</sup> AIR, 1990, Bombay H.C.

<sup>16</sup> AIR, 1980, SC

<sup>17</sup> AIR, 1994, SC

found on railway track with several injuries. The Apex court took serious note on the issue of custodial torture and held the police authority liable to pay compensation to the petitioner.

(b) Cases under the Code of criminal procedure

Before the implementation of present code of criminal procedure, there was old criminal procedure code 1898 was in force according to section 545 of which the court had the power to award compensation to the victim out of fine only with which the accused can be sentenced. The mind of the court was very clear in this regard and the apex court opined that while sentencing the accused with fine, the financial condition of the accused.

In the case of **Prabhu Prasad Shah vs. State of Bihar**<sup>18</sup> the Hon'bl Supreme Court made it clear that the compensation awardable under the code of criminal procedure is payable out of amount of fine only. Therefore the apex court while deciding an appeal awarded fine of Rs. 3000/- to the children of the deceased.

Another very important case in this regard is **Palaniappa Gounder vs. State of Tamil Nadu**<sup>19</sup>. In the present case the appellant/accused was tried and sentenced to life punishment under section 302 IPC. In appeal, the High Court of Tamil Nadu reduced his punishment from life to life imprisonment and imposed fine of Rs. 20,000/- under section 357 of Cr.p.c. Through special leave to appeal, the appellant came before the Supreme Court. The apex court reiterated its earlier view and held that the compensation is awardable out of the fine which can't be excessive. The apex court reduced the amount of fine from 20,000 to 3,000 Rs. The same opinion was expressed by the

But after inserting section 357A and B in the code of criminal procedure in 2009, the court has been empowered to award compensation to the victim in addition to the fine under section 357 of Cr.p.c. After 2009, the Apex court awarded compensation to the victim to be paid by State legal services authority or District legal services authority.

In the case of **Suresh and others vs. State of Haryana**<sup>20</sup> the accused were held guilty of kidnapping and murder and sentenced to imprisonment for life which was upheld by the High Court but the trial court did not award compensation to the victim and the High Court also dismissed the application for compensation. The daughter presented an appeal through special leave petition before the Hon'ble Supreme Court and the apex court awarded compensation of Rs. 10 lacs to the family members of deceased payable by State Legal Services Authority, Bombay within the period of one month from the date of receiving the copy of order.

<sup>18</sup> AIR, 1976, S.C.

<sup>19</sup> AIR, 1977, SC

<sup>20</sup> AIR, 2014, SC

Another important case in this reference is **Mohd. Kaleem vs. State of U.P.**<sup>21</sup> in which the victim compensation scheme introduced in the state of UP was recognized to award compensation to the victim in the case when the scheme was not in force. In this case compensation of Rs. 3 lacs was awarded to the victim of acid attack in the case in which FIR was lodged before the recognition of victim compensation scheme in UP. Against the order of trial court, the accused file an appeal in H.C. but the order of trail court was upheld by the H.C. on the ground that the scheme was launched before the completion of process of trial and the court is empowered to award compensation under the scheme.

### **Conclusion and suggestion**

Although being a welfare state, the Indian legislature has not only provided the fundamental rights but also protected them through the judicial mechanism. The criminal justice system proved to be helpful in this task. Complete criminal set up as prepared to provide justice to the victim and to punish the wrongdoer. However, lacuna was found when it has been witnessed that punishing the guilty offender is not sufficient remedy to the victim and later on special provisions have been inserted in the criminal law in this regard. Now, victim compensation scheme has been provided under the direction of central laws to provide financial help to the victim or his family members for his rehabilitation. But the important question arises is how the real victim will be identified. Whether the person who undergoes the imprisonment is always an accused or he can also be a victim because the recent case of **Vishnu Tiwari** is not unknown to all of us. Therefore, it is suggested that the term “victim” as defined in the criminal procedure code also include those person who suffers the loss due to false allegations at the cost of their liberty, respect and reputation in society. Those who suffer the stigma of being an accused however innocent must also be deemed as victim and given compensation.

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<sup>21</sup> AIR, 2015, Allahabad H.C.