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Victim Compensation - Why not a Fundamental Right?

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The article endeavors to underscore the imperative nature of elevating victim compensation to the echelon of fundamental rights within the purview of contemporary jurisprudence. In antiquity, communal support systems comprised of family, friends, and neighbours held a pivotal role in the rehabilitation of victims affected by acts of violence. However, as the modern criminal justice apparatus has evolved, these individuals have, regrettably, assumed a marginalized status, with the legal framework addressing this matter in earnest only with the advent of the 2009 amendment to the Criminal Procedure Code. Notably, a victim's sense of satisfaction hinges heavily upon the state's successful prosecution of the perpetrator, thereby resulting in penalties ranging from capital punishment to incarceration or monetary fines. Yet, an essential query arises: How does one attain justice when the state's efforts fail to secure such punitive measures? Moreover, is there recourse for the victim to seek redress and compensation for their injuries from the state? Within the ensuing discourse, we shall scrutinize the multifaceted tribulations endured by victims of violent crimes, encapsulating their physical, psychological, and financial tribulations. In light of these considerations, this article posits the incorporation of supplementary rights, in conjunction with the fundamental right to victim compensation, as a strategic measure aimed at averting what is commonly referred to as the 'second injury'. In further elucidation of these concepts, this article shall furnish an explication of the extant victim compensation scheme while concurrently proffering a set of recommendations geared towards enhancing both victim compensation and rehabilitation methodologies.

Keywords: *victim compensation, rehabilitation, right to sue, second injury, criminal justice.*

INTRODUCTION

Criminal Procedure Code¹ defines a victim as ‘the person who 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’.

In the criminal justice system, the ‘victim’ is the person who reports the crime but is often forgotten. The State takes ownership of the victim's suffering and seeks justice on their behalf. However, the underlying motive is to prevent the crime’s impact from spreading in society and further dividing it. Previously, the State acted on behalf of the victim without involving them directly in the proceedings. However, due to the influence of the political class and high-net-worth individuals over the State, justice may not always be served. Influencing the State can weaken its representation in proceedings and lead to unjust outcomes.

Malimath Committee has found from its survey, that the Victims feel ignored by the criminal justice system and lost confidence in it. Victims of violent crimes often undergo a range of physical and emotional challenges, including short-term physical reactions such as an increased heart rate, trembling, numbness, shedding tears, hypertension, temporary sensory impairment, muscle tension and nausea. Additionally, they may face long-term health issues such as insomnia and, in severe cases, even coma. Furthermore, these victims may contend with the distressing consequences of unwanted pregnancies and the risk of contracting sexually transmitted diseases, which can, tragically, be passed on to subsequent generations of children born to rape survivors.

On the psychological front, victims frequently grapple with enduring feelings of fear and helplessness. Financially, they may suffer property damage or loss and the trauma can lead to a loss of employment. This, in turn, can result in temporary or permanent unemployment, affecting their job performance, leading to pay reductions or even demotion and dismissal.

¹ Criminal Procedure Code 1973, s 2

HISTORICAL BACKGROUND OF VICTIM COMPENSATION

- Code of Hammurabi is one of the oldest criminal law codes that talks about Victim Compensation.² Hammurabi ruled the Babylonian empire from 1792-1750 BCE.
- In a historical Indian incident, Emperor Jahangir exemplified compensatory justice. In a fit of rage, the Empress fatally struck her unsatisfactory washerman. The widow appeared at Jehangir's Darbar, and when asked who was responsible for her husband's death, she boldly replied, 'The Empress'. Jahangir, astonished, drew his sword, instructing her to take the Empress's husband's life with it. The widow, however, chose a different path. She knelt before the emperor, expressing her suffering but refusing to harm the Empress or the nation through blind obedience. She offered to accept any punishment for her defiance. Jahangir, deeply moved, elevated her to the rank of baroness and bestowed her with immense riches.

VICTIM COMPENSATION SCHEME IN INDEPENDENT INDIA

As per Section 357³, it is mandated for courts to procure fees from convicted criminals to cover the medical expenses of the victim. Nevertheless, this process may pose as unjust to the victim in cases where the accused is not identified, acquitted, or discharged. Compensation for victims in India is only recognized after the 154th Law Commission Report makes recommendations. The State amended section 357 in 2009 to add section 357A⁴ and expand the scope of section 357. Section 357A requires all State governments to work with the Central government to establish a Victim Compensation Scheme. The State or District Legal Services Authorities are responsible for determining the amount of compensation.

² 'The Code of Hummurabi' (Yale Law School) <<https://avalon.law.yale.edu/ancient/hamframe.asp>> accessed 12 September 2023

³ Criminal Procedure Code 1973, s 357

⁴ Criminal Procedure Code 1973, s 357A

Section 357C⁵, states that all hospitals, public or private, whether run by the Central Government or State government, local bodies, or other persons, shall immediately, provide first aid or medical treatment, free of cost, to the victims of sexual assault, rape (minor or major).

In *Suresh & Anr v State of Haryana*,⁶ the Hon'ble Supreme Court observed, *Expanding the scope of Article 21⁷ 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 a crime is committed by an individual without any role of the State or its functionary.*

In *Rajkumar v State*,⁸ the Delhi High Court held that, *The Victim Compensation Fund set up by the State in terms of the Victim Compensation Scheme under Section 357A is at the disposal of the Legal Services Authority and the criminal court in the session of the case may only 'make recommendations' to, but not 'direct', such authority to pay compensation to the victim (or his dependents) from such fund.*

Before making a recommendation under sub-Section (2) of Section 357A for compensation to be paid in a criminal case wherein a person has been found guilty of complicity in the crime which has been proved, the criminal court must make an inquiry as to whether:

- (a) The victim (or his dependents) had suffered loss or injury as a result of the crime and require rehabilitation.*
- (b) The compensation can be ordered to be paid under Section 357 by the convict.*
- (c) the compensation awarded under Section 357 is not adequate for rehabilitation.*

VICTIM COMPENSATION SCHEME IN OTHER COUNTRIES

- New Zealand was the first country to provide for victim compensation scheme in 1963.⁹

⁵ Criminal Procedure Code 1973, s 357C

⁶ *Suresh & Anr v State of Haryana* Crim App No 420/2012

⁷ Constitution of India 1950, art 21

⁸ *Rajkumar v State of NCT of Delhi* Crim App No 1471/2023

⁹ *Handbook on Justice For Victims* (United Nations Office for drug Control and Crime Prevention)

- United Kingdom established shelters for victims of domestic violence, and sexual assault in the 1970s.¹⁰
- Germany has a Crime Victim compensation program to provide financial compensation for victims of violent or personal crime which came into force in 1976.¹¹
- In the United States, the Supreme Court ruled that consideration of Victim Impact Statements during sentence hearing was Constitutionally permissible. This enabled victims to describe the extent of any physical, emotional, or psychological effects caused by the crime. Eventually, in the US, Victim Impact Statements became part of plea bargains and parole hearings.

In a comprehensive report titled 'Criminal Justice: The Way Ahead' submitted to the British Parliament in February 2001, the Home Department identified a significant decline in victim satisfaction with the police in the UK, despite the presence of a reasonably advanced Criminal Injuries Compensation Scheme. Many victims expressed the perception that the rights of those accused of crimes were prioritized over theirs. Each time a case failed, or a verdict appeared unjust, the suffering of the victim was exacerbated. One of the pivotal recommendations from the UK report, which laid the groundwork for criminal justice reform, was to prioritize the needs of victims and witnesses within the Criminal Justice System. This reform aimed to ensure that victims and witnesses more frequently and swiftly saw justice served. It also aimed to provide support, information, and empowerment to enable them to present their best evidence in a secure environment.

No Country recognized victim compensation/rehabilitation as a fundamental right, making the victim a foreigner in the criminal justice system.

THE NEED FOR ELEVATION TO FUNDAMENTAL RIGHT

It is an absolute necessity to provide physical safety, free medical access, and rehabilitation facilities to victims of violent crimes. Denying such assistance to victims who have not

¹⁰ *Ibid*

¹¹ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985

participated in the violent crime is a clear breach of their Right to Life. It is the duty of the State to protect their life and dignity. Along with this, a supplementary Right to Sue the persons who make any derogatory comments towards the victims of violent crimes, such as rape or sexual assault, and migrant workers should be provided to avoid 'second injury'.

The objective of victim prosecution is to ensure that offenders are held accountable for their actions, thus safeguarding society from any future wrongdoing. When a crime takes place, it signifies that the state has not fulfilled its duty to provide a secure environment for its people, as outlined in Article 21¹². Consequently, it is the state's responsibility to provide compensation to victims of violent crimes to bring back them to normalcy. The payment of compensation by the offender is not possible where there is an acquittal or where the offender is not apprehended. Further, the payment remains suspended till the limitation period for the appeal expires or if an appeal is filed, till the appeal is disposed of as per section 357(2)¹³. The delay in the realization of the amount often adds to the woes of the victim.

WHAT IS ARTICLE 21 SAYING

No person shall be deprived of his life or personal liberty except according to procedure established by law.¹⁴ Victims of rape or sexual assault and migrant workers often face insensitive treatment from police officials, prosecutors, court officials and civilians. The supplementary Right to Sue will act as a deterrent to the second injury.

Take, for instance, individuals who fall victim to offenses that result in physical harm; they urgently need physical safety and immediate medical care to preserve their lives. No one should lose their life due to a lack of access to quality medical attention. Frequently, victims may have no involvement in the commission of the crime, yet they bear the brunt of the offenders' actions. It is inherently unjust to keep victims waiting for compensation while the accused exhausts all available legal remedies. Instead, the State should shoulder the responsibility of providing immediate compensation and subsequently seek reimbursement from the convicted criminal.

¹² Constitution of India 1950, art 21

¹³ Criminal Procedure Code 1973, s 357(2)

¹⁴ Constitution of India 1950, art 21

This form of support for victims not only reaffirms the principles of social solidarity but also yields benefits for the broader community. Victims of rape require immediate access to quality medical attention and mental support. Section 357C¹⁵ mandates all hospitals to provide free medical support and report the incident to the police.

In the existing victim compensation scheme, only victims of rape or sexual assault, as well as a small fraction of victims from other violent crimes, are typically endorsed by the courts for compensation. Furthermore, upon receiving an application from the victim, the Legal Services Authority offers free medical assistance to victims who can provide concrete evidence confirming their identity and the injuries sustained due to the crime. The determination of compensation amounts is carried out by the Legal Services Authority. This process inadvertently excludes other eligible individuals from benefiting from the scheme, thereby diminishing its overall effectiveness.

PROPOSED VICTIM COMPENSATION/REHABILITATION METHODS

Right to Sue: A supplementary right along with the Right to Compensation, will act as a deterrent to the second injury. Victims should have a right to sue anyone who discriminates or makes derogatory comments. Right to Sue will help bring the lives of victims to normalcy. Its effectiveness should mirror the robust provisions established under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 serving as a powerful safeguard against further harm and injustice faced by victims.

Right to Participate in Criminal proceedings: Efforts to terminate or dismiss prosecution for improper reasons can be effectively thwarted when the court maintains the ongoing involvement of the victim. This ensures that justice is not compromised by external influences and upholds the integrity of the legal process. Therefore, it becomes evident that for criminal proceedings to be truly equitable for all parties involved and for the court to receive the necessary assistance in uncovering the truth, the law must acknowledge the victim's right to participate in the investigation, prosecution, and trial. In cases where the victim is deceased or

¹⁵ Criminal Procedure Code 1973, s 357C

otherwise unavailable, this right should be conferred upon their next of kin, thereby preserving the principle of justice and fairness in the legal system.

Right to Hear: The existing law only envisages the prosecutor appointed by the State to be the proper authority to plead on behalf of the victim. However, the Code does not completely prohibit a victim from participating in the prosecution. A counsel engaged by the victim may be given a limited role in the conduct of the prosecution, that too only with the permission of the court. The counsel so engaged is to act under the direction of the public prosecutor. Victims should be granted the fundamental right to be heard during parole petitions, remission petitions, and any proceedings that have a significant impact on their case or on the status of the convicts. This right ensures that victims have a voice in critical decisions that affect their lives and provides them with a meaningful opportunity to participate in the criminal justice process. Furthermore, it promotes transparency and fairness, fostering a justice system that truly considers the interests and concerns of those who have suffered harm.

Preference in Welfare Schemes: Victims of violent crimes frequently experience a temporary or permanent loss of their means of livelihood. Prioritizing them in any state-sponsored welfare program will aid in their and their family's recovery from these setbacks.

Rehabilitation: The state has a duty to assume responsibility and provide long-term financial or medical support to victims who develop chronic illnesses as a result of a crime. In cases where victims become pregnant as a result of rape or sexual assault, the state should offer comprehensive medical and financial assistance throughout the childbirth process and ensure that the child receives free education if the victim chooses to give birth to the child.

Compensation: Individuals who have lost their means of livelihood due to victimization should receive financial compensation to support their families. Alternatively, the state should distribute groceries through the Public Distribution Systems for six months depending on the nature of the incident. The state must offer financial assistance to enable these individuals to lead a regular life, and this compensation should be sourced from both the state and the convicted criminal.

Human Resource Assistance: Immediately following the report of a violent crime, it is imperative to assign a nurse to assist the victim in recovering from the acute trauma resulting from the incident.

HOW TO POOL FUNDS FOR VICTIM COMPENSATION?

- The primary source of funds should be from fines collected from various criminals, and forfeited bail bonds.
- Unclaimed deposits from Bank Accounts, deposits from deceased persons' Provident Fund Accounts where Nominees are unknown, and fines collected by the Income tax department from the tax evaders.
- Any fines imposed as part of sentence to convicted criminals by the courts.
- Donations from the public

CONCLUSION

The criminal justice system almost completely kept the victim away from the criminal trial, and no compensation was provided to recover from the losses. Involving the first person who experienced the trauma will not only help the State expedite the trial and punish the offenders but also do justice to the victims and give them satisfaction when the offender is punished. Involving the victim in criminal trial procedure and providing him adequate compensation or rehabilitation at the right time will instill a sense of confidence in society, but this concept is very foreign to us. It can be understood that very little has been done or is being done to victims of violent crimes in India.

We can say the law is completely absent in this area except in rarest of the rare cases. Statistics of the National Legal Services Authority indicate that Victim compensation awarded by Legal Services Authorities across India in the fiscal year 2022-2023 is a mere Rs 348 crores. The State should incorporate special mechanisms for protecting victims, their families, and witnesses to ensure their safety and privacy. Elevating Victim compensation to the status of a fundamental right will do more justice to the 'forgotten person in the criminal justice system'. This shift in

responsibility for the State to provide victim compensation would also make the State more accountable in criminal trials and potentially increase the conviction rate.