

Compensation to the Victims of Crime: Critical Analysis of Indian Legislative Framework

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Victims of crimes had dominant place in the ancient Indian Criminal Justice Administration. However, through time victims of crime were slowly marginalized from the Criminal Justice Administration and the entire system has been dominated by the state and criminal. To give relief for the agony of victim, only recently the state began to give attention for the victims of crime. Therefore, in this paper, the author will critically examine the legislative framework regarding compensation to the victims of crime in India. The paper will also reveal inbuilt weaknesses in the legislation and suggest remedy.

Introduction

India does not have separate law exclusively dealing with compensation to the victims of crime. There are scattered provisions under various statutes speaking about compensation to the victims of crime. The paper critically examines those provisions related with compensation to the victims. The Constitution of India, The Code of Criminal Procedure, 1973 including its recent amendment, The Indian Penal Code (45 of 1860), The Probation of Offender Act, 1958 and other relevant statutory laws related with compensation to the victims of crime will be discussed in thoroughly. In addition to statutes, schemes prepared by the States/Union Territory Administration and their practical disparities and limitations as well as efforts by the central government to bring about uniformity among the schemes will be examined.

Definition of “Victim of Crime” under Indian Criminal Law

The term victim of crime has not defined under Indian laws dealing with compensation to the victims until 2008 amendment of the Code of Criminal Procedure. The amendment made in Criminal Procedure Code in 2008 provides the definition of ‘victim’ under section two clause [as follows:-“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 the expression “victim” includes his or her guardian or legal heir.”¹

In the above stated definition of ‘Victim’, there are three important ingredients worthy to be noted are-

- I. A person who has suffered any loss or injury caused by reason of act or omission.
- II. Accused person has been charged for his act or omission.
- III. Expression victim includes his or her guardian or legal heir.

The synthetic view of three ingredients stated above implies that only those victims who have suffered any kind of loss or injury caused by the act or omission or their guardian or legal heirs fall under definition of victim. Big confusion arises to extent that when one tries to rationalize why the legislature has included statement “accused person has been charged”. What if a crime has been committed against a person but the accused is not known or not charged for any reason? Defining the victim of crime in association with the charge of accused appears not the best way to understand the victim. Therefore, defining the term victim in association with the charge of accused seems unwise. Delhi High Court’s 2015 judgment in *Ram Phal V. State and others*² clarified the meaning of victim. The Honourable Court resolved two issues related to the meaning of the term “legal heirs” and the manner of the operation of taking appeal, the Court interpreted the term victim broadly so that the term “guardian or legal heir” in section 2, clause [(wa)] of CrPC may not understood as to exclude victims who have suffered physical, emotional or financial loss as a result of crime even though some victims may not necessarily be immediate heirs to succeed the property of deceased under law of succession. In comparison to the definition adopted by UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985,³ definition introduced for victim under 2008 amendment is much narrow and incomprehensive. In the definition given by 2008 amendment of CrPC, legislature failed to put precisely as to what constitutes loss or injury. The legislature also did not expressly include victims of criminal abuse of power in to the definition of victim. Moreover, there is a necessity to include people who have suffered injury while *intervening* to support victims in pain or to prevent victimization. For example, in the USA, specifically, State of California, New York, and Massachusetts have laws that provide compensation to persons who suffer harms while stopping a crime or apprehending an offender, etc.⁴The same is also provided under British Criminal Justice System. It is important that along with crime victims, the police are also entitled to compensation if they have suffered injury while by intervening in a crime to prevent or apprehend

¹. The Criminal Procedure Code, 1973, s. 2 [(wa)]
². (CrI.A.1415/2012).

³. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985

⁴. K.D. Gaur, *Justice to Victims of Crime: A Human Rights Approach, in Criminal Justice: A Human Rights Perspective of the Criminal Justice Process in India* 360-361 (2004).

the criminal. Thus, these provisions encourage both the police and public at large, to curb crime.

Compensation to Victims of Crime under the Constitution of India

The Constitution of India is bed rock for the justice system of the country. The provisions of Constitution as to Fundamental Rights; particularly, Article 14 (Right to equality) and 21(Right to protection of life and personal liberty) can be broadly construed so as to embrace rights of the crime victims including right to reparation. In the sense, the constitutional remedies⁵ for violations of human right, is widely applicable to the crime victims. Under Part IV, directive principles of state Policy,⁶there are articles of the Constitution which can be liberally interpreted. Art. 39 of the Constitution which describes policies to be pursued by the state to ensure economic justice can be interpreted to include crime victims in to its ambit. Article 41 inter alia provides that the state shall make effective provisions for “securing public assistance in the “cases of disablement” and in the “case of undeserved want”. The terminologies disablement and other cases of undeserved want would be surely construed to include crime victims and therefore state is indebted to deliver public support to victims by way of financial compensation apart from warranting other rights to them.⁷ These directive principles though non-justiciable, imposes duty on the state to take constructive action for the wellbeing of the society. Furthermore, many of the Directives are raised to the position of Fundamental Rights by decisions of judiciary.⁸ In addition to these, according to Art 51A of The Constitution, it is the Fundamental duty of every citizen of India, “... to have compassion for living creatures” and “to develop humanism”. These provisions also could be broadly construed in order to include victims of crime.⁹ Therefore, Constitution of India, as supreme law of the land has paved way to rise of compensatory jurisprudence for victims of crime in India.

The Code of Criminal Procedure, 1973

In fulfilment of the recommendation of the Law Commission in its 41st Report (1969), a provision was introduced for the crime victims which has been provided in Section 357 of the CrPC. This section states “Court may award compensation to victims of crime at

the time of passing of the judgment, if it considers it appropriate in a particular case, in the interest of justice”.¹⁰Unfortunately, under Section 357(1), compensation is available only when the judge imposes a fine and the extent of compensation is restricted to the quantity of the fine. It pointed out four grounds for imposing a fine:

1. Defraying pecuniary losses incurred by the person in prosecution, or
2. For bona-fide purchaser of stolen goods, or
3. For loss caused by injury or death, or
4. If the victim has suffered loss or injury caused by the offence.

However, Section 357(3)¹¹ authorises the Court to grant compensation for damage or hurt suffered by a person, even if the fine does not form a part of the punishment. It was left to the discretionary of the judiciary to determine the quantity of compensation, subject to the facts and conditions of each case. Although the basic principle underlying Section 357 is alike to that incorporated in the UN Basic Principles of Justice for Victims of Crime and abuse of Power 1985, its implementation is restricted to where:

1. The accused is convicted and,
2. Either the compensation is recovered in the form of a fine, when it forms a part of the sentence or a Magistrate may order any amount to be paid to compensate for any loss or injury by reason of the act for which the accused has been sentenced and,
3. In awarding the compensation the capacity of the accused has to be taken into account by the Magistrate.¹²

Practically, because of low rates of conviction in criminal charges,¹³prolonged proceedings and the comparatively inability of the average offender to pay, raises question whether an effective victim compensation system really exist?

The Code of Criminal Procedure (amendment) Act, 2008, which provides compensation to victims of crime brought new section 357A in to the CrPC. This section calls for the preparation of a scheme to provide funds for the compensation of victims or his dependents who have

⁵. The Constitution of India, art. 32 and 226
⁶. Art 38(1) of The Constitution of India provides that state shall strive to promote welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all institutions of national life.
⁷. The Constitution of India, art. 41
⁸. *Unnikrishnan v. State of Andhra Pradesh*, (1993) 1 SCC 645- right to education; *Randhir Singh v. Union of India*, AIR 1982 SC 879.
⁹. Anusree A, “Right to Compensation of Victims of Crime in India: Need For A Comprehensive Legislation” 2 *IJLDAI* 45 (2016).

¹⁰. Code of Criminal Procedure, 1973, s. 357(1)
¹¹. *Id.* s. 357(3): When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused 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.
¹². Jhalak Kakkar and Shruti Ojha, “An Analysis of the Vanishing Point of Indian Victim Compensation Law” 2 *JILS* 322 (2009).
¹³. *Ibid.*

suffered damage or injury as a consequence of a crime and who require recovery. Sub-section (2) of section 357A provides that at any time the Court makes a recommendation for compensation, the District Legal Service Authority or the State Legal Service Authority as the case may be, shall decide the amount of compensation to be given under the above-mentioned scheme. However, under sub-section 3 of the same provision gets flimsy at the point that it still does not take away the discretionary power of the judiciary to recommend the case to the Legal Services Authority. The problem is double folded by the fact that traditionally Indian courts have been hesitant to invoke this provision.¹⁴ A more effective alternative would be to make compensation a legal right, with a provision directing that the judges must record reasons for not granting compensation.¹⁵ Sub-section (4) of Section 357A¹⁶ provides that even where no trial takes place and the criminal is not found or identified; but the victim is known, the victim or his dependents are authorised to apply to the State or the District Legal Services Authority for award of compensation. This is tremendously progressive development which takes into consideration the practical reality of an overloaded criminal justice system, which is incapable to identify all criminals and brought them to justice. Sub-section (5)¹⁷ states that on acceptance of 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. It is appropriate that a time frame has been stated within which the Legal Services Authority should make its enquiry and award compensation. A period of two months, as stated in the proposed amendment, would guarantee speedy delivery of justice to the victim of crime and specification of a time period would create accountability and avoid dilatory measures. Furthermore, it should be noted that the section talks about 'adequate compensation'; thus ensuring the amount of compensation to be awarded just and fair.

Sub-section (6) of section 357A,¹⁸ provides that, in order to ease the suffering of the victim, the State or District Legal Services Authority may direct immediate first-aid facility or medical benefits to be made available free of cost or any other provisional relief as the appropriate authority believes fit. It is helpful that the section talks about '*alleviating the suffering*' of the victim and seeks to support the victim to recover in the after-math of the crime and guarantee that the victim does not have to

wait until the end of the trial to recover these expenses. The statutory acknowledgement of the interim relief is an important move to satisfy the urgent needs of the victim. Supplementing section 357A of CrPC, section 357C of CrPC requires all hospitals to provide immediate first aid or medical treatment, free of cost for victims of acid attack and rape. Apart from the aforementioned provisions, the victim of crime can claim compensation by approaching a higher court under Section 482 of the CrPC, which empowers the court to exercise its inherent authority in the interest of justice. However, the Supreme Court has discouraged this practice, in view of the obtainability of compensation under Section 357.¹⁹ Nonetheless, trial courts rarely exercise the powers conferred on them under Section 357. Reprimanding this attitude, the Supreme Court in the *Hari Krishna & State of Haryana v. Sukhbir Singh*²⁰, directed all courts to implement section 357 liberally and award adequate compensation, especially in cases where the accused is released on warning, probation or when the parties enter into a conciliation. At the same time, the court cautioned that the compensation has to be reasonable, fair and just; taking into consideration the facts and conditions of each case, nature of the crime, reliability of the claim and capacity of the accused to pay.²¹ The amount of compensation may be decided by bearing in mind the nature of the crime and the capability of the accused to pay. If in case, there are more than one accused they may be required to pay in equal sums, unless their ability to pay differs significantly.²² A reasonable period of time for payment of compensation, if compulsory by instalment, may also be given.²³ The court may carry out the order by imposing sentence in default.²⁴ The Supreme Court interpreted the scope of Section 357(3) to mean that a reasonable amount has to be awarded as compensation taking into account not merely the seriousness of the injury or delinquency of the accused but also the ability of the accused to pay.²⁵ This practice of considering the capacity of offenders to pay is problematic as in many cases, it either discourages the court from using its discretionary power of awarding compensation or it prompts judges to award compensation which is insignificant at all.

The Indian Penal Code (45 of 1860)

Though Indian penal code does not define or extensively state about victim or compensation to victims of crime. However, there are a few sections which endorse compensation to unfortunate victims of crime. Section

¹⁴. *Supra* note 12 at 325.

¹⁵. *Ibid.*

¹⁶. *Supra* note 1, s. 357(4).

¹⁷. *Id.* s. 357(5).

¹⁸. *Id.* s. 357(6).

¹⁹. *Palaniappa Gounder v. State of Tamil Nadu* (1977) 2 S.C.C. 634, 636 (In this case, the son and two daughters of the deceased files an application before the High Court under S. 482 of the CrPC, praying that the accused be directed to pay them, the dependants of the deceased, compensation Rupees 40,000 for the death of

their father. Finally, in the Supreme Court it was held that since S. 357 expressly confers powers on the court to compensate the heirs, there is no need for invoking or exercising the inherent powers of the court).

²⁰. (1988) 4 SCC 551.

²¹. *Id.* paragraph 11.

²². *K.A. Abbas H.S.A. v. Sabu Joseph & Others* (2010) 6 SCC 23, paragraph 22.

²³. *Id.* paragraph 20.

²⁴. *Ibid.*

²⁵. *Supra* note 20.

326A of IPC, introduced by the criminal Amendment Act, 2013, talks about “voluntarily causing grievous hurt by use of acid, etc.” stated that in addition to imprisonment, fine shall be imposed on the accused. It further provided that fine to be imposed shall be just and reasonable to cover the medical cost of the treatment of the victim.²⁶ It also provided that any fine imposed under this section shall be paid to the victim. Section 376 D of IPC is another section contains element of compensation to the victims of crime. In the section, it is clearly stated that the punishment for such crime is imprisonment which may not be less than twenty years, but which may extend imprisonment for remainder of that person's natural life, and with fine. Further it provided that the fine to be imposed shall be just and reasonable to cover the medical costs and rehabilitation of the victim.²⁷ In the same section stated that fine imposed under said section shall be given to the victim. Therefore, even though the Penal Code of India failed to deal extensively about victims and their rights as substantive criminal law, there are few instances like stated above which may indicate acknowledgement to the needs of the victims of crime. In the Criminal law (Amendment) Ordinance, 2018, amendment of sections in the IPC related with offence of rape, there are additional elements of compensation introduced to rape victims under section 376AB, 376DA and 376DB. Section 376AB of IPC Criminal Law (Amendment). In all of above stated sections, fine is part of the punishment except with death sentence. Therefore, in every case related with section 376AB, 376DA and 376DB, the court is at obligation to impose adequate fine which is reasonable to meet the medical expenses and rehabilitation of the victim except with death sentence.

The Probation of Offenders Act, 1958

Under The Probations of Offenders Act, 1958, Section 3 and 4, a court after finding an accused guilty may release him on probation. The Court which releases an offender on probation has power to require released offender to pay compensation and costs under section 5 of The Probation of Offenders Act, 1958. However, compensation to the victims of crime under The Probation of Offenders Act is very much dependent up on the good will of the judiciary. The court may or may not order compensation to the victim of crime.²⁸ At the same time the court has also discretionary power to determine the amount of compensation to be paid.

The Protection of Women from Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act, 2005 is a key achievement of the women's struggle for protection of women from domestic violence. The objective of this Act is to provide for more effective protection for the rights of women enshrined under the

Constitution. The definition of domestic violence is extensive which includes physical, sexual, verbal and emotional abuse.²⁹ A police officer, protection officer or a magistrate who has received a complaint of domestic violence has an obligation to notify the victim of her right to get a protection order or an order of pecuniary relief, a residence order a custody order, a compensation order or several such order and the accessibility of the protection officers, service providers, and right to legal aid free of charge under this Act.³⁰ Under section 20 of the same Act, monetary relief is provided for a woman who is victim of domestic violence or any child of such victim. According to the section, the magistrate may order the offender to pay monetary relief to recover the expenses incurred and losses suffered by the victim and any child of the victim as a consequence of the domestic violence. Further it is provided that compensation orders in addition to other reliefs as may be granted under the Act.³¹

The Motor Vehicles Act, 1988

Though the nature of this Act resembles to tort liability than criminal, victim of motor vehicle can claim compensation under section 140, 141 and etc. of Motor Vehicles Act, 1988. The Act clearly states the liability of the offender even without no fault from his part.³² Whenever there is a motor vehicle accident, usually it violates Section 304A IPC or Section 338 IPC or Section 279 IPC, etc. The victim of such accident takes his claims of compensation to the Motor Accidents Claims Tribunal. I.e. he claims under the Civil law. Therefore, the victims entitled to claim compensation under this Act.

Victim Compensation Schemes of States and their Implementation in India

Without having state funds, it is practically impossible to address the need of victims adequately. Because of that in 2008 amendment of CrPC, Section 357A is introduced. Section 357 of CrPC requires every state to prepare its own victim compensation scheme. Thus, it is inevitable that the scheme made by various states will have differences. In addition to being delayed to come in to practice, schemes prepared by states lack uniformity. The difference from state to state extends from differences in maximum and minimum limit of compensation to be awarded for a victim for the same crime to differences of injury covered under the scheme.

For purpose of illustration, the researcher will take some State schemes and illustrate the differences from a state to state for the same crime. For instance, for offence of rape, compensation to be awarded for the victim is maximum 3 lakhs in State of Kerala,³³ maximum of 1.5

²⁶. The Indian Penal Code (45 of 1860), s. 326A

²⁷. *Id.* s. 376D.

²⁸. The Probation of Offenders Act, 1958, s. 5

²⁹. The Protection of Women from Domestic Violence Act, 2005, s. 3

³⁰. *Id.* s. 5.

³¹. *Id.* s. 22.

³². The Motor Vehicles Act, 1988, s. 140

³³. The Victim Compensation Scheme, 2014, State of Kerala.

lakhs in State of Karnataka³⁴ except for minor victims, 2 lakhs in State of Rajasthan.³⁵ For offence of murder, maximum of 10 lakhs Delhi,³⁶ 5 lakhs Punjab,³⁷ 2 lakhs Rajasthan,³⁸ 3 lakhs Karnataka³⁹ and etc. For offence of acid attack, maximum compensation according to the Scheme of Delhi⁴⁰ 7 lakhs, State of Kerala,⁴¹ 2 lakhs, State of Punjab,⁴² 3 lakhs plus 100% medical reimbursement, State of Uttar Pradesh,⁴³ 3 lakhs and etc. The difference goes on and on from state to state for the same type of criminal injury. As illustrated above the schemes of states lacked uniformity and results injustice for the victim of the same offence who gets lesser compensation only because he/she belongs to different state with in one country. And also in most of state schemes, the amount of compensation provided is inadequate to meet the needs of the victims of crime. By understanding this problem, the Supreme Court in the case of *Suresh and another Vs. State of Haryana*⁴⁴ has held that the Scheme as notified by the Kerala Government as per Section 357A of CrPC seems to be on the higher side and hence the same needs to be incorporated by other States when the amounts stated in the Schedules of those specific States are on the lesser side. Currently, the Scheme of Delhi is very much higher than many of schemes prepared by different states including Scheme of Kerala. Thus, Union Territory of Delhi's scheme should be recommended to be followed by other states of India when their scheme provides lesser quantum of compensation for the same type of injury. These mentioned differences and insufficiency of schemes of states compelled the central government to enact Central Victim Compensation Fund (CVCF) Guidelines, 2015, and it has been revised 2016. The Central victim compensation guidelines contains twelve descriptions of criminal injuries and their respective minimum price tariff. In other words, almost all of other criminal injuries which do not fall under any of descriptions provided in the Annexure I of central victim compensation fund cannot be compensated. It is fair to conclude that vast majority of criminal injuries are not covered by the central victim compensation fund guidelines. Only horrendous and most serious type of criminal injuries are covered under the stated guidelines. However, this cannot restrict states from including other types of criminal injuries or higher amount of award in their respective victim compensation Schemes. As far as implementation of section 357A of CrPC concerned, under subsection 2 of the same section provided that whenever 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 of the same provision. In case if trial court concludes that the compensation

awarded under section 357 of CrPC is insufficient to meet the needs of victim or if the accused is acquitted or discharged and the victim needs to be rehabilitated, the court may recommend compensation.⁴⁵ Again where the criminal is not identified but the victim is identified and where no trial takes place, the victim or his dependants can apply to District or State Legal Services Authority for award of compensation.⁴⁶ The District or State Legal Service Authority, based on the cases to alleviate the suffering of the victim can order immediate first aid facility or medical benefits to be made available free of charge on the certificate of police officer not below the rank of the officer in charge of the police station or the Magistrate of the area concerned, or any other interim relief as the appropriate Authority believes fit.⁴⁷

It is also important to mention here that the schemes prepared by any of states are far from satisfying the needs of all victims of crime since the schemes covered only few injuries in addition to being meagre. Therefore, courts must give due attention to section 357 of CrPC, which at least appeared to cover vast majority of injuries in comparison with any scheme of any state in India.

Conclusion and Suggestions

Broad interpretation of article 14, 21, 38, 51A and etc. of the Constitution of India guarantee compensation to the victims of crime. However, India has no separate piece legislation dealing with compensation to the victims of crime. The remarkable development of victim compensation came in to picture after 2008 amendment of the Code of Criminal Procedure, 1973. This amendment introduced victim compensation scheme in India. However, the schemes of victim compensation prepared to implement section 357A of CrPC, have huge disparities from one state to another for the same injury in addition to the compensation being limited to only few injuries and meagre. Section 357 of CrPC has given much discretionary power to the judiciary whether to award or deny compensation. As a result, the courts are hesitant to invoke section 357 of CrPC to award compensation to the victims of crime. To address the cry of victims of crime, India should consolidate its scattered legislations dealing with compensation to the victims of crime. There should be separate piece of law exhaustively defines the rights of victims including right to receive compensation and procedures applicable to exercise such right. States and Central government should prepare one and uniform scheme of compensation. The scope of scheme should also be widened to cover various criminal injuries taking to account the economic situations of victims as well as the country.

³⁴. Karnataka Victim Compensation Scheme, 2011, modified on 19 September 2013.

³⁵. Rajasthan Victim Compensation Scheme, 2011.

³⁶. Delhi Victim Compensation Scheme, 2015.

³⁷. Punjab Victim Compensation Scheme, 2017.

³⁸. *Supra* note 35.

³⁹. *Supra* note 34.

⁴⁰. *Supra* note 36.

⁴¹. *Supra* note 33.

⁴². *Supra* note 37.

⁴³. The Uttar Pradesh Victim Compensation Scheme, 2014.

⁴⁴. (2015)2 SCC 227.

⁴⁵. *Supra* not 1, 1973, s. 357A (3)

⁴⁶. *Id.* s. 357A (4).

⁴⁷. *Id.* s. 357A (6).