



VICTIM COMPENSATION: AN URGENT NEED FOR PROPER IMPLEMENTATION

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ABSTRACT

Victim compensation has been prevalent since the historical period and its evolution is remarkable. A criminal getting punished is no way helping the victim but is only helpful for other people who could have been the victim of such atrocities. It is high time when the norm of restitution needs to be adequately applied so that the victim not only gets the chance of rehabilitating, rather it is the most retributive punishment where the convict not only gets punished but also needs to compensate the victim for loss caused by him to the victim. This concept of victim compensation was never a new concept and was derived from the kingdom period itself where victims were given the *Royal rights*. This concept was even described in mythology where Dharma played great role and described the area of rights and duties. Standing in 21st century it is the need of the hour to also look on the plight of the victims too, where little more effective implementation of the provisions of sec 357 and sec 357A of CrPC is required in order to give the victim fair chance to live the life properly and normally after such trauma or sufferings. Granting mercy can be the best action which can be done by the victim for the convict; but, at the same time, it is also

needs to be seen that the victim also gets compensated or restituted for the loss so that there remains balance in the society and secure justice for both the parties. Proper implementation of the victim compensation in criminal justice system would also reduce the number of false cases.

Keywords: Compensation, Punishment, Rehabilitation, Restitute and Victim

INTRODUCTION

Crime and deviance is an “integral part of all healthy societies”¹ and a society without crime would be as unimaginable as a utopian world. According to Emile Durkheim, though “crime” is a behavior against social standards yet serves as an important reactive function for social change transforming social belief. Though scholars like Durkheim rebuffed individualism and stressed on social solidarity while contemplating crime, yet it is not far from the truth that fundamentally the coin of crime has two facets, the accused and the victim, and proportionately punishing the accused and adequately compensating the victim, has now become the prime concern for the state.

But this scheme of compensation was never a distant dream. Since time immemorial compensating the victim was a major concern, be it through *lex talionis* or through a more reformed and revised mechanism of

¹ Emile Durkheim, *THE RULES OF SOCIOLOGICAL METHOD*. GLENCOE, 1895, (The Free Press, 1st, 1950).



state machinery. Though an exact time or date cannot be determined as to when it started, yet the oldest document reiterating the principle is Chapter 21 of Exodus:

“If men are fighting and hit a pregnant woman and she gives birth prematurely but there is no serious injury, the offender must be fined whatever the woman’s husband demands and the court allows. But if there is serious injury, you are to take life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, and bruise for bruise.”²

The victim compensation concept was evident in history where the victims were compensated in order to save the offender from violent repercussion of the victim or from the society.

Victims who were mere witnesses of justice, equity and good conscience got the opportunity to get compensated for the windfall loss rendered by the convict. Victims of crimes when enter in the world of criminal justice with the only hope of getting justice have often been harassed by the policemen or investigator or defense counsel as for them victims are just like a mere toy, who are used by them to search for the matter intensely. Even after the offenders get convicted, the victims are not getting their mode of rehabilitation through victim compensation, rather they are making a path for the offenders to modern cells

where they are given the basic necessities of life by using state funds. There has now been a major realization that only punishing or convicting the accused would do victims no good. Even death sentence or life imprisonment of the person convicted of a crime would leave not a single stone turned in the pavement of the dingy lanes of a victim’s fate.

Though, in the human rights era, there had been flares of human rights activism for protection of rights of prisoners/criminals, yet tales of compensating the victims for the losses suffered are still in whispers. Though it has become a matter of substantive right, yet in reality, the procedural safeguard lacks regulation and monitoring. Often, the inevitable test of “proximity” and “proportionality” is overlooked while compensating the victims resulting in lack of proper and adequate compensation.

Neither did the Indian legislature nor the Indian judiciary brainstorm on defining who a “victim” was nor what “rehabilitation” meant. But such definition can be borrowed from Article 1 of UNGA’s Declaration of Basic Principle of Justice for Victim and Abuse of Power³ adopted in

²Farid Hekmat, *The Origins And Evolution Of Lex Talionis In The Abrahamic Faiths, Vol. 1(1) ILS JOURNAL OF INTERNATIONAL LAW* 26(2010)

³ **Article 1.** “Victims” means any person who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.



November 1985 and Paragraph 23 of UN Standard Rules⁴ respectively.

Under Section 357 of the Code of Criminal Procedure, 1973 Courts have been conferred with power to award compensation to victims of crime only after conviction. But it was only after 2009, with the introduction of Section 357A in the Code of Criminal Procedure, 1973 that the State Governments along the Central Government formulated a scheme for compensation to victims or their dependants. Not only that, other provisions of the Code of Criminal Procedure like Sec. 250, Sec. 358 and Sec. 359 also talk about compensating the victims of false accusation, illegal arrest, etc. Even other Acts, such as Probation of Offenders Act, 1958 and Fatal Accidents Act, 1855 compel the offender to pay compensation to the victims on respective grounds.

Compensation only is not enough. Rehabilitating the victim is also required. Rehabilitation consists of victim's right to just and fair treatment, restitution, compensation and assistance. Thus, victim compensation can be one such step which not only provides compensation to the

victim but also assures the rehabilitation of the victim in the society.

HISTORY

The concept of victim compensation was evident since the ancient period and its presence was even seen in the mythology. Even this particular concept had become very vital at that time. During ancient time itself, sutra period, the claiming of compensation was considered as Royal right for the people.⁵ Further, it was seen that in the "Laws of Manu" compensation needs to be paid off to the victim for the loss done by the convict.⁶

During ancient times, there were several laws applicable for the administration of justice and various modes of punishments. At this time period, the laws were derived and got evolved from several societal customs taken into consideration the people's interest. The criminal's obligation to pay the victim under the Code of Hammurabi, the death fine of ancient Greece, restitution required by Indian Hinduism, and compensation granted under the Law of Moses are examples of pecuniary compensation to the victim in early societies. Emperor Hammurabi had created a code of laws in order to govern Babylon where the laws regarding punishment were based upon the theory of 'eye for an eye'⁷

⁴**Paragraph 23.** "Rehabilitation" is a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric and/or social functional levels, thus providing them with the tools to change their lives towards a higher level of independence... The rehabilitation process does not involve initial medical care. It includes a wide range of measures and activities from more basic and general rehabilitation to goal-oriented activities, for instance, vocational rehabilitation

⁵ M.J. Sethna, JURISPRUDENCE,(Lakhani Book Depot, 2nd,1959)- for murder the offender was obliged by the king to compensate the relatives of the deceased or the king or both.

⁶VIII, 287, vol. V, Laws of Manu.

⁷Law No. 196,Code of Hammurabi.



and ‘tooth for a tooth’⁸. The Code of Hammurabi, for instance, made clear that the criminal's pecuniary obligation served not only to make the victim whole but also to increase the severity of the criminal's punishment.⁹

Several barbaric forms of punishments were prescribed to the offenders in order to satisfy the victims' loss in Egypt. But as time passed, slowly things started shifting from barbaric efforts to the concept of granting mercy. In Rome, Seneca developed his own theory of punishment and had supported the concept of granting mercy.¹⁰

Indian legal system at that time completely focused on the concepts so highlighted in Dharamashatras and Arthashatras. Here, the concept of dharma had played a very big role. Dharma in Hindu vedic times was such that it had to be followed by not only the people but also needed to be followed by the king. There, at that time, king also needs to focus on the points that laws should be such that it should not be against the dharma. Kautilya's Arthashastras was of great importance that time and it used to give proper directions and details of the ancient legal system of India. The Arthashashtra gives directions regarding the treatment of petitioners in courts, behavior of the judges, methods of identifying witnesses indulging

in falsehood,¹¹ and punishment of offenders. The king at that time used to fix up the punishment for the crime so committed by the offender by seeing the offenders and further it was seen that if the offender seeks for the mercy, then he could be rehabilitated in the society. At that time when minors (under age of 15 years) were not punished for the sin committed, rather they were sent to the reformatory homes.¹²

During this period, there was the dominance of caste, religion, and sex and it was evident that more the victim belongs to the higher caste, penalty for the crime would increase for the offenders. The concept of penalty which was adjusted according to the level of the understanding of the culprit also comes in the purview of Manu where the penalty of theft by Shudra should be 8 times (the value of the stolen goods), those higher in the social hierarchy should be more severely punished: the Vaishya 16 times, the Kshatrya 32 times and Brahmin 64 times and may even a hundred or a hundred and twenty-eight times on the ground that he was educated to know the consequences of actions.¹³ The offence like that of theft and destruction of property, in the western world, it used to lead to the barbaric execution of the convict. Thus, soon, it was observed that there was evolution of hefty monetary fines as punishment for the crimes as an alternative for physical punishments which were imposed upon. Even it was often seen that the severity of the punishment often got reduced on the basis of

⁸ Law No. 200, Code of Hammurabi.

⁹Supra note 7, at 6.

¹⁰ S. Chakrabarty, *Victim Compensation And Support Services: A Comparative Study Of Criminal Justice System*, available at <http://hdl.handle.net/10603/190615> (Last visited on February 11, 2018).

¹¹Supra note 13, at 6

¹²*Id*

¹³ T.S. Batra, *CRIMINAL LAW IN INDIA* 2, (Metropolitan Co. Pvt. Ltd., 1981)



compensation paid to the victim who ultimately led to granting of probation or parole sentences. Soon the compensation came into the picture in the middle ages and the concept of duty played its role where any loss so committed by the convict had to pay it back as a punishment. But towards the end of middle ages, the concept started losing its grasp from the society and there was introduction of two different concepts, one is tort and the other is crime where it was seen that the State had monopolized the laws by stating that the penal laws are only applicable to crimes and, thus, were not subjected for claiming compensation where the criminals were physically punished but, the monetary compensation was exclusively given and implemented in the civil procedures.¹⁴

Thus, from the historical period itself, it had been seen that there was an arbitrary decision and enforcement regarding victim compensation had been made in the civil law itself and it is high time where it needs to be properly inculcated in criminal law.

NEED FOR VICTIM COMPENSATION IN CRIMINAL LAW

The concept of victim compensation was never a foreign concept in India. It was evident since the old kingdom period where kings used to compensate their people if any loss happened to them and the offenders were not caught and further the state fund was re-compensated by the village officer for whose neglect such loss happened.¹⁵ From the royal period, it had

been seen that the victim used to get compensated for any loss caused to him. At that time, the growth of turmoil and dissatisfaction resulted in innovative ideas, such as, determinate sentencing or part-time imprisonment. But restitution is never a big deal for rich offenders and even if there is application of “victim compensation” in the criminal trial, they just pay off the damages and again commit crime. However, it can be made grave if restitution is sentenced along with other criminal penalties. Then, definitely the sentence will be much more grievous; but it should be applicable in only cases of serious offence. But there are many critics who do not support the concept in criminal law and have upheld the traditional model legal system by stating that compensation needs to be given in terms of private wrong. Whereas penal code defines those crimes which are against the public and breaches the state’s peace. Thus, their argument is to punish the accused of criminal offence, rather extracting the punitive compensation. Thus, their word is very clear that the victim compensation needs to be applicable only in civil law. But one thing which was missed out, that the concept of restitution completely focuses on rehabilitation, deterrence, and retribution which actually suffices the purpose and need of its presence in criminal penalties.¹⁶ Restitution seems to be a good substitute of fines and imprisonment especially in case of probation or parole.¹⁷ Victim Compensation and

¹⁶VICTIM RESTITUTION IN THE CRIMINAL PROCESS: A PROCEDURAL ANALYSIS, Vol. 97, No. 4(The Harvard Law Review Association, 1984).

¹⁷ Harland, Monetaq, ' Remedies for the Victims of Crime: Assessing the Role of the Criminal Courts, 30 U.C.L.A. L. REV. 52 (1982).

¹⁴K. Kishore, THE HISTORY OF COMPENSATION OF THE VICTIMS OF CRIME, 27,(Cr.LJ, 2006)

¹⁵ Dr. PriyanathSen, GENERAL PRINCIPLE OF HINDU JURISPRUDENCE, 335 (Allahabad Law Agency, 1984)



restitution are often used interchangeably; but two are different concepts. Victim compensation and restitution still uphold the similar interest i.e. the interest of the victim. It may seem that the restitution is not so effective punishment for the respective crimes committed in the society. If seen minutely, it gets clear that it also upholds the retributive theory of punishment where it not only focuses on the wrongfulness of the offence and moral responsibility but also puts light on the relation of the victim and offender where the offender pays off the former for the loss so committed.¹⁸ If victim compensation is not inculcated in criminal law, then it is evident from several situations that many prosecution parties may not be financially sound to achieve ends of justice. They have to fight for themselves. It not only helps the offender to rehabilitate in the society, rather it is the same for victims too. And moreover as it is also stated above that fine is much more arbitrary and it is of no good to the victim; because loss so caused does not get sufficed by such fine. Though there were several efforts taken up, still the implementation of restitution or victim compensation became limited. But yes, one thing needs to be kept in mind that compensation so stated should not be such that it becomes even difficult for the victim to even survive back in the society. Moreover, in the 152nd Law Commission Report, it had been seen that there was recommendation of introduction of 357A where the victims who have undergone any bodily injury would be compensated with 25000/-; whereas the murder will entail penalty of 100000/-. This very recommendation was again made in

¹⁸Supra note 19, at 8.

154th Law Commission Report; but no such efforts were made by the government to work on this recommendation.¹⁹ Even in case of Hari Kishan case²⁰, the apex court had expressly directed all the courts to make the exercise of the Sec. 357 and need to compensate the victims, especially in that case when the accused gets release on admonition, probation or when both parties enter into a compromise. The aim of the court through this provision was to avoid the anger of the society towards the offender and, ultimately, to help that person to accomplish the self-respect what he has lost due to his action. Though there are provisions like Sec 357 and Sec 357A in CrPC; but they lacks proper awareness and implementation.

There are cases where there is no individual who has done a crime and has to pay compensation for it; but there are incidences where offenders become victims due to the several atrocities done by the public officers. At that time, burden comes to the state to compensate the family members and the victim for such physical injury and mental harassment. Prosecution may be initiated against a victim due to false report lodged against him. So, due to state's monopolization of legitimate violence, it is the state which becomes responsible for the protection of the injured party as "The king usurped the right of the citizen to restore equilibrium after a crime had been committed". When the state becomes unsuccessful in its work, it is obligated to compensate the injured party for resulting

¹⁹See 154th Report of the Law Commission of India(1973).

²⁰Hari Kishan And State Of Haryana v. Sukhbir Singh, AIR 1988 SC 2127



damage. The victims of custodial atrocities are entitled to get compensation from the state as decided in the case of Nilabhathi Behera v. State of Orissa²¹ and further in the case of D.K.Basu v. State of West Bengal²², it was stated that the victims or the heirs of the deceased victims are entitled to claim compensation for the tortious act so committed by the functionaries of the state. Thus, awareness of victim compensation should be in created on large scale so that masses at large get well acquainted with such compensation and implementation of the law relating to victim compensation is made more effective.

CONCLUSION

“Of all the persons involved in the criminal justice system, the VICTIM is the one who has most often been overlooked.”

Alfred Cohn and Roy Udolf

In the case of Rattiram & Ors.v. State of M.P.²³, the apex court was of the opinion that:

“Criminal jurisprudence, with the passage of time, has laid emphasis on victimology which fundamentally is a perception of a trial from the view point of the criminal as well as the victim. Both are viewed in the social context. The view of the victim is given due regard and respect in certain countries. It is the duty of the court to see that the victims’ right is protected.”

Victim compensation has always been a tough aim to achieve where victims have to fight to get it. Although victim compensation is an age old concept, yet its development needs more vigorous efforts. Besides that, compensatory jurisprudence has also emerged in the light of human rights activism as a dynamic and liberal interpretation of Art. 21 of the Constitution of India.

However, the term “Compensation” in present context means amends for the loss sustained. Compensation is anything given to make things equivalent, a thing given to make amends for loss, recompense, remuneration or pay.²⁴ It is an indication of duty of the general public which is considerate in nature speaking to a non-criminal reason and end.²⁵ Though the principle of the protection of rights of accused is one of the prime concerns of administration of criminal justice, yet there is a dire need also to balance the rights of victims. Practically, the victim remains a forgotten man. Providing compensation is one such tool that can mitigate victim’s agony to some extent; but its weak implementation has crippled the criminal justice system and victims remain at the loggerheads in their fight for justice. While the Code of Criminal Procedure, 1973 accepts the principle of victim compensation, in practice, the provision has remained merely on paper. It also lacks proper motivation. It does not assure speedy or sure relief as the trial period is lengthy in

²¹Nilabhathi Behera v. State of Orissa,1993 AIR 1960, 1993 SCR (2) 581

²²D.K.Basu v. State of West Bengal,(1997) 1 SCC 416 : AIR 1997 SC 610.

²³Rattiram&Ors.v. State of M.P.,AIR 2012 SC 1485.

²⁴ State of Gujarat v. Shantilal, AIR 1969 SC 634 at 644

²⁵V.V. Devasia, and L. Devasia, CRIMINOLOGY, VICTIMOLOGY AND CORRECTIONS, 97 (Ashish Publishing House, 1992)



India. It has also failed to provide interim or immediate compensation to victim. Not only that, the Indian judiciary has no alternative for getting relief from the backlog of cases because our system is crippling under its own weight. Effective implementation of the victim compensation is the only hope through which the confidence of the masses can be restored in the system.

However, an analysis of case laws also gives an indication that the courts in India, at least the higher level courts, have started realizing the plight of the victim and the necessity to provide relief to the victim to the extent possible by restitution. Natural justice guarantees rehabilitation and ultimate removal of hardships of the aggrieved, which to an extent, can be achieved through compensation. If the victim compensation is properly and speedily implemented in criminal justice system, it would lead to reduction in lodging of false cases also.

