

The Concept of Victim Compensation: An Introduction

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Abstract: The term, 'Victim' varies in different legal, social, psychological or criminological contexts. Victims are the sufferers of moral, physical or material damage as a direct result of crime. It also includes those who have close relationship with a person who died as a result of a crime. '*Ubi jus, ibi remedium*' is the basic principle in the tort which states that there is no wrong without a remedy and the rule of law requires that wrongs should not remain unredressed. The term, 'Compensation' in the present time context means amends for the loss sustained. It is used in relation to a wrongful act, which causes the injury. Literally, compensation means the money or kind which is given to compensate for loss sustained by the victim of crime or by the representative of the deceased or who has suffered of pecuniary loss or non-pecuniary loss.

Keywords: Crime, Remedy, Loss, Victim, Compensation

INTRODUCTION

Victims are the person(s), who have faced injury in physical or mental, emotional suffering or economic loss or impairment of fundamental rights. The studies about victims is called, 'Victimology'. Until recently, the victims were not studied seriously and remained as the weeping beggar at the door of criminal justice. In the earlier, the development of Criminal Justice System (CJS) diagnosed the position of victims but not the victims' reputation. However, now it has been possible to describe the concept and theoretical development of victim and victim compensation. Hence, over a few years, due to fast scientific growth, the concept of victim and victim compensation has been added to a branch of 'Criminology'.

OBJECTIVES:

The present paper is an attempt to focus on the concept of victim and compensation to victim. The basic objective of the paper is to introduce with the terms, victims and victim compensation along with the justification of awarding compensation in favour of the victims of crimes under the provisions of different laws in India.

METHODOLOGY:

The methodology used while writing this paper is analytical. Both the primary and secondary sources like standard reference books, law

reporters, journals, committees & commissions' reports, various newspapers, e-materials, internet sources including different web sites etc. are studied and visited.

ANALYSIS:

The connotation of the term, 'Victim' vary in different legal, social, psychological or criminological contexts. The term 'Victim' can be described as below:

- ❖ Those who have as a direct result of a crime suffered moral, physical or material damage,
- ❖ Those who have suffered physical, moral or material damage through an attempted offence,
- ❖ Those whose material damage caused by the crime was made good after the crime, either by the criminal himself or with the help of Militia or of an individual action and
- ❖ Close relation of the person who died as a result of crime.

Thus, the term 'Victim' means a person who has been victimized by another person against whom legal action may be taken for compensation and allied relief. Victim in relation to criminal justice administration means victims of rape, victims of murder, victims of cheating, victims of criminal breach of trust, etc. According to an amendment in Cr. PC in the year, 2008, '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.

Ubi jus, ibi remedium is the basic principle in the law of tort that states that there is no wrong without a remedy and the rule of law requires that wrongs should not remain unrepressed. The compensation constitutes an important remedial measure in Tort law and the principles relating to the determination of damages and compensation in tort are well established.

The term 'Compensation' in the 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. Compensation, as distinct from damages which is used in relation to a wrongful act causing the injury. Literally, compensation means the money or kind which is given to compensate for loss or injury, whole process of compensation is to make good the losses sustained by the victim of crime or by the legal representative of the deceased or who has suffered of pecuniary loss or non-pecuniary loss. Compensation to the victims of Crime means something given in recompense i.e., equivalent rendered. It is to be noted that the whole purpose of compensation is to make good the loss sustained by the victim or legal representative of the deceased. Generally the term compensation limits itself to monetary compensation which is calculated on the basis of two heads: pecuniary loss or non-pecuniary loss. According to Oxford dictionary, 'Compensation means to provide something good to balance or reduce the bad effect of damage, loss, injury, etc.' As per Black's Law dictionary, 'Compensation means payment of damages, or any other act that court order to be done by a person who has caused injury to another and must therefore make the other whole.'

In *Shantilal case (State of Gujarat v. Shantilal, AIR 1969 SC 634)* and *Smt. P. Ramadevi v. C.B. Saikrishna case [AIR 1994 Kant 8(12)]*, Supreme Court of India held that the compensation is anything given to make things equivalent, a thing given to make amends for loss, recompense, remuneration or pay. Therefore, compensation means an act of the court which orders a certain sum of money that there by the person dignified may receive equal value for his loss or be made whole in respect of his injury.

JUSTIFICATION FOR VICTIM COMPENSATION:

Victim Compensation is a noble idea and if successfully meted out it retains the equity between the injured and the injurer. Victim's ego gets satisfied and he feels sense of belongingness and security in the society. The modern world has almost discouraged the reimbursement to the victim by offender or his family because the state sponsored punishment supplanted victim and family reparations. The restitution has replaced by punishment. As justice should not be done but it must be seen to have been done, therefore according to punishment to the offender or violator of the rights be it may legal rights, fundamental rights or human rights, of an individual is just the former part of justice i.e., the justice has been done by punishing the

culprit. But the later part that it must be seen to have been done still requires something more to be done. It requires just not only punishment to the accused but caring for the victim and protection of his rights and supporting him in time of distress.

The idea of victim and compensation to such victim is not new but was existing in the ancient time, which got lost in the later period when the state emerged focusing primarily on retribution on behalf of a victim by itself. Later the criminal justice system due to its over emphasis on the offender and his rights, lost right of the victims. After Independence, we the people of India devised for our self and excellent piece of state craft in the form of constitution of India, wherein due to the commitment to the human dignity, we classified certain rights as fundamental rights was done and granting of power to the various wings governing, 'We the People' under the expectation that they shall never toy with these basic rights took place. Apart from it, India became signatory to various international covenants and conventions with regards to the human rights which also warrant the state to take care of the human rights and other rights mentioned therein which are primarily indispensable so far as the human being is concerned.

Article 9(5) of the International Covenant on Civil and Political Rights, 1996 states, and 'Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.' 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. The 154th Law Commission of India reports on the Cr. P.C., devoted an entire chapter to 'Victimology' in which the growing emphasis on victim's rights in criminal trials was discussed extensively as under:

- Increasingly the attention of criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimization and protection of victims of crimes. Crimes often entail substantive harms to people and not merely symbolic harm to the social order. Consequently, the needs and rights of victims of crime should receive priority attention in the total response to crime. One recognized method of protection of victim is compensation to victims of crime.
- The principles of victimology has foundation in Indian constitutional jurisprudence. The provision of Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) of the constitution of India form the bulwark for a new social order in which social and economic justice would blossom in the national life of the country (Article 38). Article 41 mandates inter alia that the State shall make effective provision for 'securing the right to public assistance in cases of

disablement and in other cases of undeserved want.' So, also the Article 51-A makes it a fundamental duty of every Indian citizen, inter Alioto have compassion for living creatures' and to 'develop humanism'. If emphatically interpreted and imaginatively expanded these provisions can form the constitutional underpinnings for victimology.

- In India the criminal law provides compensation to the victims and their dependants only in a limited manner. Section 357 of the Code of Criminal Procedure incorporate this concept to an extent and empowers the Criminal Courts to grant compensation to the victims.
- In India the principles of compensation to crime victims need to be reviewed and expanded to cover all forfeitures realized. The state should accept the principle of providing assistance to the victims out of its own funds.

Under the Tort law, in order to claim compensation, the tort must be of such a nature as will entitle the plaintiff to recover damages. Where, therefore, the case is of a nature which,

(a) Does not give rise to a right to the plaintiff to recover damages, or to the existence of the liability of the defendant, as where the defendant has committed no wrong, where a breach of contract or a tort, or

(b) Does not occasion any loss or damage, or no cause of action accrues to the plaintiff, as and when he himself is at fault or the damages are too remote, or he has failed to mitigate his damages.

Thus, Compensation cannot be granted to the plaintiff of that part of loss:

- Which is due to the plaintiff's own contributory negligence or
- Of which the defendant's conduct is not the cause or
- Which is not within the scope of the protection of the particular contract or tort or
- Which the plaintiff should have avoided or mitigated or
- Which is too uncertain or
- Which is past or prospective, i.e., too remote.

SUGGESTION:

In the last decade, the scenario of victim compensation has been drastically changed all over the world. However, in compares to other developed countries, the position of India is lower in the field of victim compensation. There are some suggestions given below to upgrade the position of India in this regard:

- There is extensive need of the enactment of victim compensation legislation in India.
- Active participation of victims in the Criminal Justice System (CJS)
- Measures to be adopted for providing compensation as a statutory right.
- Provision of recording the reason of not providing compensation by the Judges.
- Sufficient fund needs to be created and kept ready for providing compensation which can prevent further victimization.
- Steps like 'Efforts of victim compensation assistance', 'victim compensation awareness programme' etc to be adopted in effective sense.

CONCLUSION:

Victim's Compensation has always been the weeping beggar at the door of the criminal justice. Although, it is an age old concept but its development on more scientific lines and also as a branch of criminology has begun since a few decades back. Several countries have taken up the different schemes of payment of compensation to their victims of crime. These are taken through different legislative measures. In India as well there are different statutory provisions in criminal justice under which the compensation can be awarded to the victims of crime, viz. The Workmen Compensation Act, 1923, Prevention of Food Adulteration Act, 1954, Fatal Accident Act, 1855, Protection of Civil Right Act, 1955, Probation of Offenders Act, 1958, Code of Criminal Procedure, 1973, The Motor Vehicle Act, 1988, The Protection of Human Rights Act, 1993, The Protection of Women against Domestic Violence Act, 2005 etc. In pursuance of the recommendation of Law Commission of India in its 41st report, a comprehensive provision for compensation to the victims of crime has been inserted in section 357 of the Code of Criminal Procedure, 1973. Under the provision of section 357A of the Code, initiative has been incorporated to provide compensation to the victim or his/her legal heir(s) through different Victim Compensation Schemes (VCS). The Legal Service Authorities at national level (NALSA), state and district level (SLSA and DLSA) can play very vital roles in this regard. The respective Government at the centre and the state should create sufficient fund for providing compensation to the victims of crimes.

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